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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1935.

Nos. 403-404.

GEORGE ASHWANDER et al.,
Petitioners,
vs.
TENNESSEE VALLEY AUTHORITY et al.,
Respondents.

APPENDIX TO BRIEF FOR PETITIONERS.

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TENNESSEE VALLEY AUTHORITY ACT OF 1933, 48 STAT. 58, 16 U. S. CODE, SECS. 831-831cc, TOGETHER WITH TEXT OF AMENDMENT ADOPTED AUGUST 31, 1935, PUBLIC NO. 412, 74TH CONGRESS, H. R. 8632 (INSERTED FOLLOWING THE SECTIONS OF THE ORIGINAL ACT AMENDED OR SUPPLEMENTED).

[Public—No. 17—73d Congress]

[H. R. 5081]

AN ACT

To improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the

"Tennessee Valley Authority" (hereinafter referred to as the "Corporation"). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of the board. This Act may be cited as the "Tennessee Valley Authority Act of 1933."

Sec. 2. (a) The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States, and shall receive a salary at the rate of $10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this Act. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

(f) No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

(g) The board shall direct the exercise of all the powers of the Corporation.

(h) All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act.

Sec. 3. The board shall, without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such managers, assistant managers, officers, employees, attorneys, and agents, as

are necessary for the transaction of its business, fix their compensation, define their duties, require bonds of such of them as the board may designate, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the Corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks, or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the Secretary of Labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.

Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this Act.

Sec. 4. Except as otherwise specifically provided in this Act, the Corporation—

(a) Shall have succession in its corporate name.

(b) May sue and be sued in its corporate name.

(c) May adopt and use a corporate seal, which shall be judicially noticed.

(d) May make contracts, as herein authorized.

(e) May adopt, amend, and repeal bylaws.

(f) May purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

The board shall select a treasurer and as many assistant treasurers as it deems proper, which treasurer and assistant treasurers shall give such bonds for the safe-keeping of the securities and moneys of the said Corporation as the board may require: Provided, That any member of said board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives.

(g) Shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation.

(h) Shall have power in the name of the United States of America to exercise the right of eminent domain, and in the purchase of any real estate or the acquisition of real estate by condemnation proceedings, the title to such real estate shall be taken in the name of the United States of America, and thereupon all such real estate shall be entrusted to the Corporation as the agent of the United States to accomplish the purposes of this Act.

(i) Shall have power to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries, and in the event that the owner or owners of such property shall fail and refuse to sell to the Corporation at a price deemed fair and reasonable by the board, then the Corporation may proceed to exercise the right of eminent domain, and to condemn all property that it deems necessary for carrying out the purposes of this Act, and all such condemnation proceedings shall be had pursuant to the provisions and requirements hereinafter specified, with reference to any and all condemnation proceedings.

Amended by adding thereto: "Provided, That nothing contained herein or elsewhere in this Act shall be construed to deprive the Corporation of the rights conferred by the Act of February 26, 1931 (46 Stat. 1422, ch. 307, secs. 1 to 5, inclusive), as now compiled in section 258a to 258e, inclusive, of Title 40 of the United States Code." [From Sec. 1 of Amendment.]

(j) Shall have power to construct dams, reservoirs, power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines.

Amended: "(j) Shall have power to construct such dams, and reservoirs, in the Tennessee River and its tributaries, as in conjunction with Wilson Dam, and Norris, Wheeler, and Pickwick Landing Dams, now under construction, will provide a nine-foot channel in the said river and maintain a water supply for the same, from Knoxville to its mouth, and will best serve to promote navigation on the Tennessee River and its tributaries and control destructive flood waters in the Tennessee and Mississippi River drainage basins; and

shall have power to acquire or construct power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines. The directors of the Authority are hereby directed to report to Congress their recommendations not later than April 1, 1936, for the unified development of the Tennessee River system." [Sec. 2 of Amendment.]

Amended by adding new section: "(k) At any time before the expiration of five years from the date when this section, as amended, becomes law may in the name of and as agent for the United States and subject to approval of the President, dispose of any of such real property as in the judgment of the Board may be no longer necessary in carrying out the purposes of this Act, but no land shall be conveyed on which there is a permanent dam, hydraulic power plant, fertilizer plant or munitions plant, heretofore or hereafter built by or for the United States or for the Authority." [Sec. 3 of Amendment.]

Amended by adding new section: "(l) Shall have power to advise and cooperate in the readjustment of the population displaced by the construction of dams, the acquisition of reservoir areas, the protection of watersheds, the acquisition of rights-of-way, and other necessary acquisitions of land, in order to effectuate the purposes of the Act; and may cooperate with Federal, State, and local agencies to that end." [Sec. 13 of Amendment.]

Sec. 5. The board is hereby authorized—

(a) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase of materials by the board or only for the payment of carrying charges on special materials manufactured at the board's request for its program.

(b) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce.

(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction.

Amended: "'(c) To cooperate with National, State, district, or county experimental stations or demonstration farms, with farmers, landowners, and associations of farmers or landowners, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction, and for promoting the prevention of soil erosion by the use of fertilizers and otherwise.'' [Sec. 4 of Amendment.]

(d) The board in order to improve and cheapen the production of fertilizer is authorized to manufacture and sell fixed nitrogen, fertilizer, and fertilizer ingredients at Muscle Shoals by the employment of existing facilities, by modernizing existing plants, or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen or the cheapening of the production of fertilizer.

(e) Under the authority of this Act the board may make donations or sales of the product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct, for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of their use.

(f) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants.

(g) In the event it is not used for the fixation of nitrogen for agricultural purposes or leased, then the board shall maintain in stand-by condition nitrate plant numbered 2, or its equivalent, for the fixation of atmospheric nitrogen, for the production of explosives in the event of war or a national emergency, until the Congress shall by joint resolution release the board from this obligation, and if any part thereof be used by the board for the manufacture of phosphoric acid or potash, the balance of nitrate plant numbered 2 shall be kept in stand-by condition.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the Corporation to furnish nitrogen products for military purposes, and nitrogen and other fertilizer products for agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) To request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the Corporation the better to carry out its powers successfully, and as far as practicable shall utilize the services of such officers, agents, and employees, and the President shall, if in his opinion, the public interest, service, or economy so require, direct that such assistance, advice, and service be rendered to the Corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board: Provided, That

any invention or discovery made by virtue of and incidental to such service by an employee of the Government of the United States serving under this section, or by any employee of the Corporation, together with any patents which may be granted thereon, shall be the sole and exclusive property of the Corporation, which is hereby authorized to grant such licenses thereunder as shall be authorized by the board: Provided further, That the board may pay to such inventor such sum from the income from sale of licenses as it may deem proper.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the Corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said Department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the Corporation shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war.

(n) The President is authorized, within twelve months after the passage of this Act, to lease to any responsible farm organization or to any corporation organized by it nitrate plant numbered 2 and Waco Quarry, together with the railroad connecting said quarry with nitrate plant numbered 2, for a term not exceeding fifty years at a rental of not less than $1 per year, but such authority shall be

subject to the express condition that the lessee shall use said property during the term of said lease exclusively for the manufacture of fertilizer and fertilizer ingredients to be used only in the manufacture of fertilizer by said lessee and sold for use as fertilizer. The said lessee shall covenant to keep said property in first-class condition, but the lessee shall be authorized to modernize said plant numbered 2 by the installation of such machinery as may be necessary, and is authorized to amortize the cost of said machinery and improvements over the term of said lease or any part thereof. Said lease shall also provide that the board shall sell to the lessee power for the operation of said plant at the same schedule of prices that it charges all other customers for power of the same class and quantity. Said lease shall also provide that, if the said lessee does not desire to buy power of the publicly owned plant, it shall have the right to purchase its power for the operation of said plant of the Alabama Power Company or any other publicly or privately owned corporation engaged in the generation and sale of electric power, and in such case the lease shall provide further that the said lessee shall have a free right of way to build a transmission line over Government property to said plant, paying the actual expenses and damages, if any, incurred by the Corporation on account of such line. Said lease shall also provide that the said lessee shall covenant that during the term of said lease the said lessee shall not enter into any illegal monopoly, combination, or trust with any privately owned corporation engaged in the manufacture, production, and sale of fertilizer with the object or effect of increasing the price of fertilizer to the farmer.

Sec. 6. In the appointment of officials and the selection of employees for said Corporation, and in the promotion

of any such employees or officials, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board.

Sec. 7. In order to enable the Corporation to exercise the powers and duties vested in it by this Act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, including steam plants, located, respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof, and all other property to be acquired by the Corporation in its own name or in the name of the United States of America, are hereby intrusted to the Corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time

deem necessary and proper for the purposes of the Corporation as herein stated.

Sec. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

(b) The Corporation shall at all times maintain complete and accurate books of accounts.

(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath (or affirmation) to support the Constitution of the United States and to faithfully and impartially perform the duties imposed upon him by this Act.

Sec. 9. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the Corporation covering the preceding governmental fiscal year. This report shall include an itemized statement of the cost of power at each power station, the total number of employees and the names, salaries, and duties of those receiving compensation at the rate of more than $1,500 a year.

(b) The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things,

property and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the board, one for public inspection at the principal office of the corporation, and the other to be retained by him for the uses of the Congress. The expenses for each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or appropriations for the General Accounting Office, and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties intrusted to the Corporation by law.

Amended: "(b) All purchases and contracts for supplies or services, except for personal services, made by the Corporation, shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Board shall determine to be adequate to insure notice and opportunity for competition: Provided, That advertisement shall not be required when, (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed $500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen: Pro-

vided further, That in comparing bids and in making awards the Board may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

"The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the Board, one for public inspection at the principal office of the Corporation, and the other to be retained by him for the uses of the Congress: Provided, That such report shall not be made until the Corporation shall have had reasonable opportunity to examine the exceptions and criticisms of the Comptroller General or the General Accounting Office, to point out errors therein, explain or answer the same, and to file a statement which shall be submitted by the Comptroller General with his report. The expenses for each such audit shall be paid from any appropriation or appropriations for the General Accounting Office, and such part of such expenses as may be allocated to the cost of generating, transmitting, and distributing electric energy shall be reimbursed promptly by the Corporation as billed by the Comptroller General. The Comptroller General shall make special report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties entrusted to the Corporation by law." [Sec. 14 of Amendment.]

Amended by adding new section: "Sec. 9a. 'The Board is hereby directed in the operation of any dam or reservoir in its possession and control to regulate the stream flow primarily for the purposes of promoting navigation and controlling floods. So far as may be consistent with such purposes, the Board is authorized to provide and operate facilities for the generation of electric energy at any such dam for the use of the Corporation and for the use of the United States or any agency thereof, and the Board is further authorized, whenever an opportunity is afforded, to provide and operate facilities for the generation of electric energy in order to avoid the waste of water power, to transmit and market such power as in this act provided, and thereby, so far as may be practicable, to assist in liquidating the cost or aid in the maintenance of the projects of the Authority." [Sec. 5 of Amendment.]

Sec. 10. The board is hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the board it shall give preference to States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members: Provided, That all contracts made with private companies or individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the board to cancel said contract upon five years' notice in writing, if the board needs said power to supply the demands of States, counties, or municipalities. In order to promote and encourage

the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable: Provided further, That the board is hereby authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use, or for small or local industries, and it may cooperate with State governments, or their subdivisions or agencies, with educational or research institutions, and with cooperatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region.

Amended by adding thereto: "Provided further, That the Board is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules, and to provide for such rules and regulations as in its judgment may be necessary or desirable for carrying out the purposes of this Act, and in case the purchaser shall fail to comply with any such terms and conditions, or violate any such rules and regulations, said contract may provide that it shall be voidable at the election of the Board: Provided further, That in order to supply farms and small villages with electric power directly as contemplated by this section, the Board in its discretion shall have power to acquire existing electric facilities used in serving such farms and small villages: And provided further, That the terms 'States', 'counties', and 'municipalities' as used in this Act shall be construed to include the public agencies of any of them unless the context requires a different construction." [Sec. 6 of Amendment.]

Sec. 11. It is hereby declared to be the policy of the Government so far as practical to distribute and sell the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance. This policy is further declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity. It is further hereby declared to be the policy of the Government to utilize the Muscle Shoals properties so far as may be necessary to improve, increase, and cheapen the production of fertilizer and fertilizer ingredients by carrying out the provisions of this Act.

Sec. 12. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power, it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power, or from funds secured by the sale of bonds hereafter provided for, to construct, lease, purchase, or authorize the construction of transmission lines within transmission distance from the place where generated, and to interconnect with other systems. The board is also authorized to lease to any person, persons, or corporation the use of any transmission line owned by the Government and operated by the board, but no such lease shall be made that in any way

interferes with the use of such transmission line by the board: Provided, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct and maintain a properly designed and built transmission line to the Government reservation upon which is located a Government generating plant, or to a main transmission line owned by the Government or leased by the board and under the control of the board, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization, or two or more of them, for the sale of electricity for a term not exceeding thirty years; and in any such case the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the board for such power: Provided further, That all contracts entered into between the Corporation and any municipality or other political subdivision or cooperative organization shall provide that the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class, and such contract shall be voidable at the election of the board if a discriminatory rate, rebate, or other special concession is made or given to any consumer or user by the municipality or other political subdivision or cooperative organization: And provided further, That as to any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the

same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said person or corporation to agree that any resale of such electric power by said person or corporation shall be made to the ultimate consumer of such electric power at prices that shall not exceed a schedule fixed by the board from time to time as reasonable, just, and fair; and in case of any such sale, if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the board, the contract for such sale between the board and such distributor of electricity shall be voidable at the election of the board: And provided further, That the board is hereby authorized to enter into contracts with other power systems for the mutual exchange of unused excess power upon suitable terms, for the conservation of stored water, and as an emergency or break-down relief.

Amended by adding new section: "Sec. 12a. In order (1) to facilitate the disposition of the surplus power of the Corporation according to the policies set forth in this Act; (2) to give effect to the priority herein accorded to States, counties, municipalities, and nonprofit organizations in the purchase of such power by enabling them to acquire facilities for the distribution of such power; and (3) at the same time to preserve existing distribution facilities as going concerns and avoid duplication of such facilities, the Board is authorized to advise and cooperate with and assist, by extending credit for a period of not exceeding five years' to, States, Counties, municipalities and nonprofit organizations situated within transmission distance from any dam where such power is generated by the Corporation in acquiring, improving, and operating (a) existing distribution facilities and incidental works, including generating plants; and (b) interconnecting transmission lines; or in acquiring any interest in such facilities, incidental works, and lines." [Sec. 7 of Amendment.]

Sec. 13. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from any other hydropower plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per centum of the gross proceeds from the sale of power generated at Cove Creek Dam, hereinafter provided for, or any other dam located in the State of Tennessee, shall be paid to the State of Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much additional power is thereby generated at Dam Numbered 2 and at any other dam hereafter constructed by the Government of the United States on the Tennessee River, in the State of Alabama, or in the State of Tennessee, and from the gross proceeds of the sale of such additional power 2½ per centum shall be paid to the State of Alabama and 2½ per centum to the State of Tennessee. These percentages shall apply to any other dam that may hereafter be constructed and controlled and operated by the board on the Tennessee River or any of its tributaries, the main purpose of which is to control flood waters and where the development of electric power is incidental to the operation of such flood-control dam. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee, the board shall not take into consideration the proceeds of any power sold or delivered to the Government of the United States, or any department or agency of the Government of the United States, used in the operation of any locks on the Tennessee River or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose: Provided, That the percentages to be paid to the States of Alabama and Tennessee, as provided in this section, shall be subject to revision and

change by the board, and any new percentages established by the board, when approved by the President, shall remain in effect until and unless again changed by the board with the approval of the President. No change of said percentages shall be made more often than once in five years, and no change shall be made without giving to the States of Alabama and Tennessee an opportunity to be heard.

Sec. 14. The board shall make a thorough investigation as to the present value of Dam Numbered 2, and the steam plants at nitrate plant numbered 1, and nitrate plant numbered 2, and as to the cost of Cove Creek Dam, for the purpose of ascertaining how much of the value or the cost of said properties shall be allocated and charged up to (1) flood control, (2) navigation, (3) fertilizer, (4) national defense, and (5) the development of power. The findings thus made by the board, when approved by the President of the United States, shall be final, and such findings shall thereafter be used in all allocation of value for the purpose of keeping the book value of said properties. In like manner, the cost and book value of any dams, steam plants, or other similar improvements hereafter constructed and turned over to said board for the purpose of control and management shall be ascertained and allocated.

Amended by adding thereto: "The Board shall, on or before January 1, 1937, file with Congress a statement of its allocation of the value of all such properties turned over to said Board, and which have been completed prior to the end of the preceding fiscal year, and shall thereafter in its annual report to Congress file a statement of its allocation of the value of such properties as have been completed during the preceding fiscal year.

"For the purpose of accumulating data useful to the Congress in the formulation of legislative policy in

matters relating to the generation, transmission, and distribution of electric energy and the production of chemicals necessary to national defense and useful in agriculture, and to the Federal Power Commission and other Federal and State agencies, and to the public, the Board shall keep complete accounts of its costs of generation, transmission, and distribution of electric energy and shall keep a complete account of the total cost of generating and transmission facilities constructed or otherwise acquired by the Corporation, and of producing such chemicals, and a description of the major components of such costs according to such uniform system of accounting for public utilities as the Federal Power Commission has, and if it have none, then it is hereby empowered and directed to prescribe such uniform system of accounting, together with records of such other physical data and operating statistics of the Authority as may be helpful in determining the actual cost and value of services, and the practices, methods, facilities, equipment, appliances, and standards and sizes, types, location, and geographical and economic integration of plants and systems best suited to promote the public interest, efficiency, and the wider and more economical use of electric energy. Such data shall be reported to the Congress by the Board from time to time with appropriate analyses and recommendations, and, so far as practicable, shall be made available to the Federal Power Commission and other Federal and State agencies which may be concerned with the administration of legislation relating to the generation, transmission, or distribution of electric energy and chemicals useful to agriculture. It is hereby declared to be the policy of this Act that, in order, as soon as practicable, to make the power projects self-supporting and self-liquidating, the surplus power shall be sold at rates which, in the opinion of the Board, when applied to the normal capacity of the Authority's power facilities, will produce gross revenues in excess of the cost of production of said power and in addition to the statement of the cost of power at each power station as required by section 9 (a) of the 'Tennessee Valley Act of 1933', the Board shall file with each an-

nual report, a statement of the total cost of all power generated by it at all power stations during each year, the average cost of such power per kilowatt hour, the rates at which sold, and to whom sold, and copies of all contracts for the sale of power." [Sec. 8 of Amendment.]

Sec. 15. In the construction of any future dam, steam plant, or other facility, to be used in whole or in part for the generation or transmission of electric power the board is hereby authorized and empowered to issue on the credit of the United States and to sell serial bonds not exceeding $50,000,000 in amount, having a maturity not more than fifty years from the date of issue thereof, and bearing interest not exceeding 3½ per centum per annum. Said bonds shall be issued and sold in amounts and prices approved by the Secretary of the Treasury, but all such bonds as may be so issued and sold shall have equal rank. None of said bonds shall be sold below par, and no fee, commission, or compensation whatever shall be paid to any person, firm, or corporation for handling, negotiating the sale, or selling the said bonds. All of such bonds so issued and sold shall have all the rights and privileges accorded by law to Panama Canal bonds, authorized by section 8 of the Act of June 28, 1902, chapter 1302, as amended by the Act of December 21, 1905 (ch. 3, sec. 1, 34 Stat. 5), as now compiled in section 743 of title 31 of the United States Code. All funds derived from the sale of such bonds shall be paid over to the Corporation.

Amended by adding new section: "Sec. 15a. With the approval of the Secretary of the Treasury, the Corporation is authorized to issue bonds not to exceed in the aggregate $50,000,000 outstanding at any one time, which bonds may be sold by the Corporation to obtain funds to carry out the provisions of section 7 of this amendatory Act. Such bonds shall be in such

forms and denominations, shall mature within such periods not more than fifty years from the date of their issue, may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein, shall bear such rates of interest not exceeding 3½ per centum per annum, shall be subject to such terms and conditions, shall be issued in such manner and amount, and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury: Provided, That such bonds shall not be sold at such prices or on such terms as to afford an investment yield to the holders in excess of 3½ per centum per annum. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation should not pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof, which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated

as public-debt transactions of the United States. With the approval of the Secretary of the Treasury, the Corporation shall have power to purchase such bonds in the open market at any time and at any price. No bonds shall be issued hereunder to provide funds or bonds necessary for the performance of any proposed contract negotiated by the Corporation under the authority of section 7 of this amendatory Act until the proposed contract shall have been submitted to and approved by the Federal Power Commission. When any such proposed contract shall have been submitted to the said Commission, the matter shall be given precedence and shall be in every way expedited and the Commission's determination of the matter shall be final. The authority of the Corporation to issue bonds hereunder shall expire at the end of five years from the date when this section as amended herein becomes law, except that such bonds may be issued at any time after the expiration of said period to provide bonds or funds necessary for the performance of any contract entered into by the Corporation, prior to the expiration of said period, under the authority of section 7 of this amendatory Act." [Sec. 9 of Amendment.]

Sec. 16. The board, whenever the President deems it advisable, is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2.

Sec. 17. The Secretary of War, or the Secretary of the Interior, is hereby authorized to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long custom become

known and designated as the Cove Creek Dam, together with a transmission line from Muscle Shoals, according to the latest and most approved designs, including power house and hydroelectric installations and equipment for the generation of power, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam: Provided, however, That the President is hereby authorized by appropriate order to direct the employment by the Secretary of War, or by the Secretary of the Interior, of such engineer or engineers as he may designate, to perform such duties and obligations as he may deem proper, either in the drawing of plans and specifications for said dam, or to perform any other work in the building or construction of the same. The President may, by such order, place the control of the construction of said dam in the hands of such engineer or engineers taken from private life as he may desire: And provided further, That the President is hereby expressly authorized, without regard to the restriction or limitation of any other statute, to select attorneys and assistants for the purpose of making any investigation he may deem proper to ascertain whether, in the control and management of Dam Numbered 2, or any other dam or property owned by the Government in the Tennessee River Basin, or in the authorization of any improvement therein, there has been any undue or unfair advantage given to private persons, partnerships, or corporations, by any officials or employees of the Government, or whether in any such matters the Government has been injured or unjustly deprived of any of its rights.

Sec. 18. In order to enable and empower the Secretary of War, the Secretary of the Interior, or the board to carry out the authority hereby conferred, in the most economical and efficient manner, he or it is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain for all purposes of this Act, and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam, and to negotiate and conclude contracts with States, counties, municipalities, and all State agencies and with railroads, railroad corporations, common carriers, and all public utility commissions and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric-light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this Act. When said Cove Creek Dam, transmission line, and power house shall have been completed, the possession, use, and control thereof shall be intrusted to the Corporation for use and operation in connection with the general Tennessee Valley project, and to promote flood control and navigation in the Tennessee River.

Sec. 19. The Corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including

access to pending applications for patents) necessary to enable the Corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, or any method of improving and cheapening the production of hydroelectric power, and any owner of a patent whose patent rights may have been thus in any way copied, used, infringed, or employed by the exercise of this authority by the Corporation shall have as the exclusive remedy a cause of action against the Corporation to be instituted and prosecuted on the equity side of the appropriate district court of the United States, for the recovery of reasonable compensation for such infringement. The Commissioner of Patents shall furnish to the Corporation, at its request and without payment of fees, copies of documents on file in his office: Provided, That the benefits of this section shall not apply to any art, machine, method of manufacture, or composition of matter, discovered or invented by such employee during the time of his employment or service with the Corporation or with the Government of the United States.

Sec. 20. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract for the purchase of electric power or fixed nitrogen or fertilizer ingredients is hereby violated, after the amount of the damages has been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court.

Sec. 21. (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the Corporation and to moneys and properties of the United States intrusted to the Corporation.

(b) Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both.

Sec. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this Act, and to provide for the general welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee basin and adjoining territory as may be useful to the Congress and to the several States

in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to cooperate with the States affected thereby, or subdivisions or agencies of such States, or with cooperative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.

Sec. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee drainage basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in said river basin.

Sec. 24. For the purpose of securing any rights of flowage, or obtaining title to or possession of any property, real or personal, that may be necessary or may become necessary, in the carrying out of any of the provisions of this Act, the President of the United States for a period

of three years from the date of the enactment of this Act, is hereby authorized to acquire title in the name of the United States to such rights or such property, and to provide for the payment for same by directing the board to contract to deliver power generated at any of the plants now owned or hereafter owned or constructed by the Government or by said Corporation, such future delivery of power to continue for a period not exceeding thirty years. Likewise, for one year after the enactment of this Act, the President is further authorized to sell or lease any parcel or part of any vacant real estate now owned by the Government in said Tennessee River Basin, to persons, firms, or corporations who shall contract to erect thereon factories or manufacturing establishments, and who shall contract to purchase of said Corporation electric power for the operation of any such factory or manufacturing establishment. No contract shall be made by the President for the sale of any of such real estate as may be necessary for present or future use on the part of the Government for any of the purposes of this Act. Any such contract made by the President of the United States shall be carried out by the board: Provided, That no such contract shall be made that will in any way abridge or take away the preference right to purchase power given in this Act to States, counties, municipalities, or farm organizations: Provided further, That no lease shall be for a term to exceed fifty years: Provided further, That any sale shall be on condition that said land shall be used for industrial purposes only.

Sec. 25. The Corporation may cause proceedings to be instituted for the acquisition by condemnation of any lands, easements, or rights of way which, in the opinion of the Corporation, are necessary to carry out the provi-

sions of this Act. The proceedings shall be instituted in the United States district court for the district in which the land, easement, right of way, or other interest, or any part thereof, is located, and such court shall have full jurisdiction to divest the complete title to the property sought to be acquired out of all persons or claimants and vest the same in the United States in fee simple, and to enter a decree quieting the title thereto in the United States of America.

Upon the filing of a petition for condemnation and for the purpose of ascertaining the value of the property to be acquired, and assessing the compensation to be paid, the court shall appoint three commissioners who shall be disinterested persons and who shall take and subscribe an oath that they do not own any lands, or interest or easement in any lands, which it may be desirable for the United States to acquire in the furtherance of said project, and such commissioners shall not be selected from the locality wherein the land sought to be condemned lies. Such commissioners shall receive a per diem of not to exceed $15 for their services, together with an additional amount of $5 per day for subsistence for time actually spent in performing their duties as commissioners.

It shall be the duty of such commissioners to examine into the value of the lands sought to be condemned, to conduct hearings and receive evidence, and generally to take such appropriate steps as may be proper for the determination of the value of the said lands sought to be condemned, and for such purpose the commissioners are authorized to administer oaths and subpoena witnesses, which said witnesses shall receive the same fees as are provided for witnesses in the Federal courts. The said commissioners shall thereupon file a report setting forth their conclusions as to the value of the said property

sought to be condemned, making a separate award and valuation in the premises with respect to each separate parcel involved. Upon the filing of such award in court the clerk of said court shall give notice of the filing of such award to the parties to said proceeding, in manner and form as directed by the judge of said court.

Either or both parties may file exceptions to the award of said commissioners within twenty days from the date of the filing of said award in court. Exceptions filed to such award shall be heard before three Federal district judges unless the parties, in writing, in person, or by their attorneys, stipulate that the exceptions may be heard before a lesser number of judges. On such hearing such judges shall pass de novo upon the proceedings had before the commissioners, may view the property, and may take additional evidence. Upon such hearings the said judges shall file their own award, fixing therein the value of the property sought to be condemned, regardless of the award previously made by the said commissioners.

At any time within thirty days from the filing of the decision of the district judges upon the hearing on exceptions to the award made by the commissioners, either party may appeal from such decision of the said judges to the circuit court of appeals, and the said circuit court of appeals shall upon the hearing on said appeal dispose of the same upon the record, without regard to the awards or findings theretofore made by the commissioners or the district judges, and such circuit court of appeals shall thereupon fix the value of the said property sought to be condemned.

Upon acceptance of an award by the owner of any property herein provided to be appropriated, and the payment of the money awarded or upon the failure of either party to file exceptions to the award of the commissioners within

the time specified, or upon the award of the commissioners, and the payment of the money by the United States pursuant thereto, or the payment of the money awarded into the registry of the court by the Corporation, the title to said property and the right to the possession thereof shall pass to the United States, and the United States shall be entitled to a writ in the same proceeding to dispossess the former owner of said property, and all lessees, agents, and attorneys of such former owner, and to put the United States, by its corporate creature and agent, the Corporation, into possession of said property.

In the event of any property owned in whole or in part by minors, or insane persons, or incompetent persons, or estates of deceased persons, then the legal representatives of such minors, insane persons, incompetent persons, or estates shall have power, by and with the consent and approval of the trial judge in whose court said matter is for determination, to consent to or reject the awards of the commissioners herein provided for, and in the event that there be no legal representatives, or that the legal representatives for such minors, insane persons, or incompetent persons shall fail or decline to act, then such trial judge may, upon motion, appoint a guardian ad litem to act for such minors, insane persons, or incompetent persons, and such guardian ad litem shall act to the full extent and to the same purpose and effect as his ward could act, if competent, and such guardian ad litem shall be deemed to have full power and authority to respond, to conduct, or to maintain any proceeding herein provided for affecting his said ward.

Sec. 26. The net proceeds derived by the board from the sale of power and any of the products manufactured by the Corporation, after deducting the cost of operation,

maintenance, depreciation, amortization, and an amount deemed by the board as necessary to withhold as operating capital, or devoted by the board to new construction, shall be paid into the Treasury of the United States at the end of each calendar year.

Amended: "Sec. 26. Commencing July 1, 1936, the proceeds for each fiscal year derived by the Board from the sale of power or any other products manufactured by the Corporation, and from any other activities of the Corporation including the disposition of any real or personal property, shall be paid into the Treasury of the United States at the end of each calendar year, save and except such part of such proceeds as in the opinion of the Board shall be necessary for the Corporation in the operation of dams and reservoirs, in conducting its business in generating, transmitting, and distributing electric energy and in manufacturing, selling, and distributing fertilizer and fertilizer ingredients. A continuing fund of $1,000,000 is also excepted from the requirements of this section and may be withheld by the Board to defray emergency expenses and to insure continuous operation: Provided, That nothing in this section shall be construed to prevent the use by the Board, after June 30, 1936, of proceeds accruing prior to July 1, 1936, for the payment of obligations lawfully incurred prior to such latter date." [Sec. 10 of Amendment.]

Amended by adding new section: "Sec. 26a. The unified development and regulation of the Tennessee River system requires that no dam, appurtenant works, or other obstruction, affecting navigation, flood control, or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the said river or any of its tributaries until plans for such construction, operation, and maintenance shall have been submitted to and approved by the Board; and the construction, commencement of construction, operation, or maintenance of such structures without such approval is hereby prohibited. When such plans shall have been approved,

deviation therefrom either before or after completion of such structures is prohibited unless the modification of such plans has previously been submitted to and approved by the Board.

"In the event the Board shall, within sixty days after their formal submission to the Board, fail to approve any plans or modifications, as the case may be, for construction, operation, or maintenance of any such structures on the Little Tennessee River, the above requirements shall be deemed satisfied, if upon application to the Secretary of War, with due notice to the Corporation, and hearing thereon, such plans or modifications are approved by the said Secretary of War as reasonably adequate and effective for the unified development and regulation of the Tennessee River system.

"Such construction, commencement of construction, operation, or maintenance of any structures or parts thereof in violation of the provisions of this section may be prevented, and the removal or discontinuation thereof required by the injunction or order of any district court exercising jurisdiction in any district in which such structures or parts thereof may be situated, and the Corporation is hereby authorized to bring appropriate proceedings to this end.

"The requirements of this section shall not be construed to be a substitute for the requirements of any other law of the United States or of any State, now in effect or hereafter enacted, but shall be in addition thereto, so that any approval, license, permit, or other sanction now or hereafter required by the provisions of any such law for the construction, operation, or maintenance of any structures whatever, except such as may be constructed, operated, or maintained by the Corporation, shall be required, notwithstanding the provisions of this section." [Sec. 11 of Amendment.]

Sec. 27. All appropriations necessary to carry out the provisions of this Act are hereby authorized.

Sec. 28. That all Acts or parts of Acts in conflict herewith are hereby repealed, so far as they affect the operations contemplated by this Act.

Sec. 29. The right to alter, amend, or repeal this Act is hereby expressly declared and reserved, but no such amendment or repeal shall operate to impair the obligation of any contract made by said Corporation under any power conferred by this Act.

Sec. 30. The sections of this Act are hereby declared to be separable, and in the event any one or more sections of this Act be held to be unconstitutional, the same shall not affect the validity of other sections of this Act.

Approved May 18th, 1933.

Amended by adding new section: "Sec. 31. This Act shall be liberally construed to carry out the purposes of Congress to provide for the disposition of and make needful rules and regulations respecting Government properties entrusted to the Authority, provide for the national defense, improve navigation, control destructive floods, and promote interstate commerce and the general welfare, but no real estate shall be held except what is necessary in the opinion of the Board to carry out plans and projects actually decided upon requiring the use of such land: Provided, That any land purchased by the Authority and not necessary to carry out plans and projects actually decided upon shall be sold by the Authority as agent of the United States, after due advertisement, at public auction to the highest bidder, or at private sale as provided in section 3 of this amendatory Act." [Sec. 12 of Amendment.]

Separability Provision of Amendatory Act of August 31, 1935:

Sec. 15. That the sections of this Act are hereby declared to be separable, and in the event of any one or more sections of this Act, or parts thereof, be held to be unconstitutional, such holding shall not affect the validity of other sections or parts of this Act.

Approved, August 31, 1935.

SECTION 124 OF THE NATIONAL DEFENSE ACT OF 1916.

(39 Stat. 166, 215.)

"**Nitrate Supply.**—The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also hereby authorized and empowered to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites, upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.

The president is authorized to lease, purchase, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants, and to take from any lands of the United States, or to purchase or acquire by condemnation materials, minerals, and processes, patented

or otherwise, necessary for the construction and operation of such plants and for the manufacture of such products.

The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

The President is hereby authorized and empowered to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof.

The sum of $20,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to enable the President of the United States to carry out the purposes herein provided for.

The plant or plants provided for under this Act shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital.

In order to raise the money appropriated by this Act and necessary to carry its provisions into effect, the Secretary of the Treasury, upon the request of the President of the United States, may issue and sell, or use for such purpose or construction hereinabove authorized, any of the bonds of the United States now available in the Treasury of the United States under the Act of August fifth, nineteen hundred and nine, the Act of February fourth, nineteen hundred and ten, and the Act of March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $20,000,000: *Provided,* That any Panama Canal

bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion, may deem advisable, and fix, instead of fifty years after date of issue, as in said Act of August fifth, nineteen hundred and nine, not exceeding fifty years."

STATUTE AUTHORIZING CONDEMNATION FOR NITRATE PLANT—APRIL 11, 1918.

(40 Stat. 518-519, 50 U. S. Code, Sec. 171.)

Chap. 51. An Act to amend an Act entitled "An Act to authorize condemnation proceedings of lands for military purposes," approved July second, nineteen hundred and seventeen, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That page one, line eight, of an Act entitled "An Act to authorize condemnation proceedings of lands for military purposes," approved July second, nineteen hundred and seventeen, be, and the same is hereby, amended by adding after the word "camps" the following: "and for the construction and operation of plants for the production of nitrates and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operation of such plants," so that the same when amended will read as follows:

"That hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the de-

velopment and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: **Provided**, That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase or enter into a contract for the use of the same at such price without further delay: **Provided, further**, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of land and the interest and rights pertaining thereto required for the above-mentioned purposes: **And provided further**: That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, and the provision of section three hundred anf fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended during the period of the existing emergency." Approved, April 11, 1918.

(The Muscle Shoals Act of 1928.)

70th Congress, 1st Session

S. J. RES. 46

(This Resolution Failed to Receive Executive Approval.)

JOINT RESOLUTION

Providing for the completion of Dam Numbered 2 and the steam plant at nitrate plant numbered 2 in the vicinity of Muscle Shoals for the manufacture and distribution of fertilizer, and for other purposes.

That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to aid navigation and the control of destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Muscle Shoals Corporation of the United States" (hereinafter referred to as the corporation). The board of directors first appointed shall be deemed the incorporators and the incorporation shall be held to have been effected from the date of the first meeting of the board. This act may be cited as the "Muscle Shoals act of 1928."

Sec. 2 (a) The board of directors of the corporation (hereinafter referred to as the board) shall be composed of three members, not more than two of whom shall be members of the same political party, to be appointed by the President, by and with the advice and consent of the Senate. The board shall organize by electing a chairman, vice chairman, and other officers, agents, and employees, and shall proceed to carry out the provisions of this act.

(b) The terms of office of the members first taking office

after the approval of this act shall expire as designated by the President at the time of nomination, one at the end of the second year, one at the end of the fourth year, and one at the end of the sixth year, after the date of approval of this act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States and shall receive compensation at the rate of $50 per day for each day that he shall be actually engaged in the performance of the duties vested in the board, to be paid by the corporation as current expenses, not to exceed, however, one hundred and fifty days for the first year after the date of the approval of this act, and not to exceed one hundred days in any year thereafter. Members of the board shall be reimbursed by the corporation for actual expenses (including traveling and subsistence expenses) incurred by them while in the performance of the duties vested in the board by this act.

(f) No director shall have any financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribu-

tion of fixed nitrogen, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Muscle Shoals project as a producer of concentrated fertilizers.

(g) The board shall direct the exercise of all the powers of the corporation.

(h) All members of the board shall be persons that profess a belief in the feasibility and wisdom, having in view the national defense and the encouragement of interstate commerce, of producing fixed nitrogen under this act of such kinds and at such prices as to induce the reasonable expectation that the farmers will buy said products, and that by reason thereof the corporation may be a self-sustaining and continuing success.

Sec. 3. (a) The chief executive officer of the corporation shall be a general manager, who shall be responsible to the board for the efficient conduct of the business of the corporation. The board shall appoint the general manager, and shall select a man for such appointment who has demonstrated his capacity as a business executive. The general manager shall be appointed to hold office for ten years, but he may be removed by the board for cause, and his term of office shall end upon repeal of this act, or by amendment thereof expressly providing for the termination of his office. Should the office of general manager become vacant for any reason, the board shall appoint his successor as herein provided.

(b) The general manager shall appoint, with the advice and consent of the board, two assistant managers who shall be responsible to him, and through him, to the board. One of the assistant managers shall be a man possessed of knowledge, training, and experience to render him competent and expert in the production of fixed nitrogen. The other assistant manager shall be a man trained

and experienced in the field of production and distribution of hydroelectric power. The general manager may at any time, for cause, remove any assistant manager, and appoint his successor as above provided. He shall immediately thereafter make a report of such action to the board, giving in detail the reason therefor. He shall employ, with the approval of the board, all other agents, clerks, attorneys, employees, and laborers.

(c) The combined salaries of the general manager and the assistant managers shall not exceed the sum of $50,000 per annum, to be apportioned and fixed by the board.

Sec. 4. Except as otherwise specifically provided in this act, the corporation—

(a) Shall have succession in its corporate name.

(b) May sue and be sued in its corporate name, but only for the enforcement of contracts and the defense of property.

(c) May adopt and use a corporate seal, which shall be judicially noticed.

(d) May make contracts, but only as herein authorized.

(e) May adopt, amend, and repeal by-laws.

(f) May purchase or lease and hold such personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

(g) May appoint such officers, employees, attorneys, and agents as are necessary for the transaction of its business, fix their compensation, define generally their duties, require bonds of them and fix the penalties thereof, and dismiss at pleasure any such officer, employee, attorney, or agent, and provide a system of organization to fix responsibility and promote efficiency.

(h) The board shall require that the general manager and the two assistant managers, the secretary and the treasurer, the bookkeeper or bookkeepers, and such other administrative and executive officers as the board may see fit to include, shall execute and file before entering upon their several offices good and sufficient surety bonds, in such amount and with such surety as the board shall approve.

(i) Shall have all such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the corporation, including the right to exercise the power of eminent domain.

Sec. 5. The board is hereby authorized and directed—

(a) To operate existing plants for experimental purposes, to construct, maintain, and operate experimental plants at or near Muscle Shoals for the manufacture of fertilizer or any of the ingredients comprising fertilizer for experimental purposes;

(b) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase by the Government or only for the payment of carrying charges on special materials manufactured at the Government's request for its program;

(c) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce;

(d) To cooperate with National, State, district, or county experimental stations or demonstration farms, for the use of new forms of fertilizer or fertilizer practices

during the initial or experimental period of their introduction;

(e) The board shall manufacture fixed nitrogen at Muscle Shoals by the employment of existing facilities (by modernizing existing plants), or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen. The fixed nitrogen provided for in this act shall be in such form and in combination with such other ingredients as shall make such nitrogen immediately available and practical for use by farmers in application to soil and crops.

(f) Under the authority of this act the board may donate not exceeding 1 per centum of the total product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of use of same.

(g) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the corporation to furnish nitrogen products for military and agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) The board shall have power to request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the corporation the better to carry out its powers successfully, and the President shall, if in his

opinion the public interest, service, and economy so require, direct that such assistance, advice, and service be rendered to the corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board and of the general manager.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the corporation shall be sold for use outside of the United States, her Territories and possessions, except to the United States Government for the use of its Army and Navy or to its allies in case of war.

Sec. 6. In order to enable the corporation to exercise the powers vested in it by this act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, located respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power

house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof are hereby entrusted to the corporation for the purposes of this act.

(b) The President of the United States is authorized to provide for the transfer to the corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

Sec. 7. (a) The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to venue of civil suits.

(b) The corporation shall at all times maintain complete and accurate books of accounts.

Sec. 8. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the corporation covering the preceding fiscal year. This report shall include the total number of employees and the names, salaries, and duties of those receiving compensation at the rate of more than $2,500 a year.

(b) The board shall require a careful and scrutinizing audit and accounting by the General Accounting Office during each governmental fiscal year of operation under this act, and said audit shall be open to inspection to the public at all times and copies thereof shall be filed in the principal office of the Muscle Shoals Corporation at Muscle Shoals in the State of Alabama. Once during each fiscal

year the President of the United States shall have power, and it shall be his duty, upon the written request of at least two members of the board, to appoint a firm of certified public accountants of his own choice and selection which shall have free and open access to all books, accounts, plants, warehouses, offices, and all other places, and records, belonging to or under the control of or used by the corporation in connection with the business authorized by this act. And the expenses of such audit so directed by the President shall be paid by the board and charged as part of the operating expenses of the corporation.

Sec. 9. The board is hereby empowered and authorized to sell the surplus power not used in its operations and for operation of locks and other works generated at said steam plant and said dam to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth, and to carry out said authority the board is authorized to enter into contracts for such sale for a term not exceeding ten years and in the sale of such current by the board it shall give preference to States, counties, or municipalities purchasing said current for distribution to citizens and customers.

Sec. 10. It is hereby declared to be the policy of the Government to distribute the surplus power generated at Muscle Shoals equitably among the States within transmission distance of Muscle Shoals.

Sec. 11. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power to construct, lease, or authorize the construction of transmission lines within transmission distance in any direction from said Dam Numbered

2 and said stream plant: Provided, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct a transmission line to Muscle Shoals, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization, or two or more of them, for the sale of electricity for a term not exceeding fifteen years, and in any such case the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the board for such power: And provided further, That any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said person or corporation to agree that any resale of such electric power by said person or corporation shall be sold to the ultimate consumer of such electric power at a price that shall not exceed an amount fixed as reasonable, just, and fair by the Federal Power Commission; and in case of any such sale if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the Federal Power Commission, the contract for such sale between the board and such distributor of electricity shall be declared null and void and the same shall be canceled by the board.

Sec. 12. The net proceeds derived by the board from the

sale of power and any of the products manufactured by the corporation, after deducting the cost of operation, maintenance, depreciation, and an amount deemed by the board as necessary to withhold as operating capital, shall be paid into the Treasury of the United States at the end of each calendar year.

Sec. 13. The Secretary of War is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2. Provided, That the Secretary of War shall not install the additional power unit in said steam plant until, after investigation, he shall be satisfied that the foundation of said steam plant is sufficiently stable or has been made sufficiently stable to sustain the additional weight made necessary by such installation.

Sec. 14. It is hereby declared to be the policy of the Government to utilize the Muscle Shoals properties for the fixation of nitrogen for agricultural purposes in time of peace.

Sec. 15. The Secretary of War is hereby authorized, with appropriations hereafter to be made available by the Congress, to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long usage become known and designated as the Cove Creek Dam, according to the latest and most approved designs of the Chief of Engineers, including its power house and hydroelectric installations and equipment for the generation of at least two hundred thousand horse-

power, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam.

Sec. 16. In order to enable and empower the Secretary of War to carry out the authority hereby conferred, in the most economical and efficient manner, he is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam and to negotiate and conclude contracts with States, counties, municipalities, and all State agencies and with railroads, railroad corporations, common carriers, and all public utility commissions and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric-light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this act. When said Cove Creek Dam and transportation facilities and power house shall have been completed, the possession, use, and control thereof shall be entrusted to the corporation for use and operation in connection with the general Muscle Shoals project and to promote flood control and navigation in the Tennessee River, and in the Clinch River.

Sec. 17. The corporation as an instrumentality and

agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including access to pending applications for patents) necessary to enable the corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient thereof, and any patentee whose patent rights may have been thus in any way copied, used, or employed, by the exercise of this authority by the corporation, shall have as the exclusive remedy a cause of action for any damages claimed to be instituted and prosecuted for the recovery of reasonable compensation on the equity side of the appropriate district court of the United States. The Commissioner of Patents shall furnish to the corporation, at its request and without payment of fees, copies of documents on file in his office.

Sec. 18. The Government of the United States hereby reserves the right, in case of war, or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract, for the purchase of electric power or fixed nitrogen or its ingredients, is hereby violated after the amount of the damages have been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court.

Sec. 19 (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper han-

dling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the corporation and to moneys and properties of the United States intrusted to the corporation.

(b) Any person who, with intent to defraud the corporation, or to deceive any director or officer of the corporation or any officer or employee of the United States (1) makes any false entry in any book of the corporation, or (2) makes any false report or statement for the corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both.

Sec. 20. In order that the board may not be delayed in carrying out the program authorized herein the sum of $10,000,000 is hereby authorized to be appropriated for that purpose from the Treasury of the United States, of which not to exceed $2,000,000 shall be made available with which to begin construction of Cove Creek Dam during the calendar year 1929.

Sec. 21. That all appropriations necessary to carry out the provisions of this act are hereby authorized.

Sec. 22. That all acts or parts of acts in conflict herewith are hereby repealed.

Sec. 23. That this act shall take effect immediately.

Sec. 24. The right to alter, amend, or repeal this act is hereby expressly declared and reserved.

(The Muscle Shoals Act of 1931.)

71st Congress, 2d Session

S. J. RES. 49

(Vetoed by President Hoover.)

JOINT RESOLUTION

To provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to aid navigation and the control of destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Muscle Shoals Corporation of the United States" (hereinafter referred to as the corporation). The board of directors first appointed shall be deemed the incorporators and the incorporation shall be held to have been effected from the date of the first meeting of the board. This Act may be cited as the "Muscle Shoals Act of 1929."

Sec. 2. (a) The board of directors of the corporation (hereinafter referred to as the board) shall be composed of three members, not more than two of whom shall be members of the same political party, to be appointed by the President, by and with the advice and consent of the

Senate. The board shall organize by electing a chairman, vice chairman, and other officers, agents, and employees, and shall proceed to carry out the provisions of this Act.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the second year, one at the end of the fourth year, and one at the end of the sixth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States and shall receive compensation at the rate of $50 per day for each day that he shall be actually engaged in the performance of the duties vested in the board, to be paid by the corporation as current expenses, not to exceed, however, one hundred and fifty days for the first year after the date of the approval of this Act, and not to exceed one hundred days in any year thereafter. Members of the board shall be reimbursed by the corporation for actual expenses (including traveling and subsistence

expenses) incurred by them while in the performance of the duties vested in the board by this Act.

(f) No director shall have any financial interest in any public utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the Manufacture, selling, or distribution of fixed nitrogen, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Muscle Shoals project as a producer of concentrated fertilizers.

(g) The board shall direct the exercise of all the powers of the corporation.

(h) All members of the board shall be persons that profess a belief in the feasibility and wisdom, having in view the national defense and the encouragement of interstate commerce, of producing fixed nitrogen under this act of such kinds and at such prices as to induce the reasonable expectation that the farmers will buy said products, and that by reason thereof the corporation may be a self sustaining and continuing success.

Sec. 3. (a) The chief executive officer of the corporation shall be a general manager, who shall be responsible to the board for the efficient conduct of the business of the corporation. The board shall appoint the general manager, and shall select a man for such appointment who has demonstrated his capacity as a business executive. The general manager shall be appointed to hold office for ten years, but he may be removed by the board for cause, and his term of office shall end upon repeal of this Act, or by amendment thereof expressly providing for the termination of his office. Should the office of general manager become vacant for any reason, the board shall appoint his successor as herein provided.

(b) The general manager shall appoint, with the advice and consent of the board, two assistant managers who shall be responsible to him, and through him, to the board. One of the assistant managers shall be a man possessed of knowledge, training, and experience to render him competent and expert in the production of fixed nitrogen. The other assistant manager shall be a man trained and experienced in the field of production and distribution of hydroelectric power. The general manager may at any time, for cause, remove any assistant manager, and appoint his successor as above provided. He shall immediately thereafter make a report of such action to the board, giving in detail the reason therefor. He shall employ, with the approval of the board, all other agents, clerks, attorneys, employees, and laborers.

(c) The combined salaries of the general manager and the assistant managers shall not exceed the sum of $50,000 per annum, to be apportioned and fixed by the board.

Sec. 4. Except as otherwise specifically provided in this Act, the corporation

(a) Shall have succession in its corporate name.

(b) May sue and be sued in its corporate name, but only for the enforcement of contracts and the defense of property.

(c) May adopt and use a corporate seal, which shall be judicially noticed.

(d) May make contracts, but only as herein authorized.

(e) May adopt, amend, and repeal by-laws.

(f) May purchase or lease and hold such personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

(g) May appoint such officers, employees, attorneys, and agents as are necessary for the transaction of its business, fix their compensation, define generally their duties, require bonds of them and fix the penalties thereof, and dismiss at pleasure any such officer, employee, attorney, or agent, and provide a system of organization to fix responsibility and promote efficiency.

(h) The board shall require that the general manager and the two assistant managers, the secretary and the treasurer, the bookkeeper or bookkeepers, and such other administrative and executive officers as the board may see fit to include, shall execute and file before entering upon their several offices good and sufficient surety bonds, in such amount and with such surety as the board shall approve.

(i) Shall have all such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the corporation, including the right to exercise the power of eminent domain.

Sec. 5. The board is hereby authorized and directed—

(a) To operate existing plants for experimental purposes, to construct, maintain, and operate experimental plants at or near Muscle Shoals for the manufacture of fertilizer or any of the ingredients comprising fertilizer for experimental purposes;

(b) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government or only for the payment of carrying charges on special materials manufactured at the Government's request for its program;

(c) To arrange with farmers and farm organizations for large scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce;

(d) To cooperate with National, State, district, or county experimental stations or demonstration farms, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction;

(e) The board shall manufacture fixed nitrogen at Muscle Shoals by the employment of existing facilities (by modernizing existing plants), or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen. The fixed nitrogen provided for in this Act shall be in such form and in combination with such other ingredients as shall make such nitrogen immediately available and practical for use by farmers in application to soil and crops.

(f) Under the authority of this Act the board may donate not exceeding 1 per centum of the total product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of use of same.

(g) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the corporation to furnish nitrogen products for military and agricultural purposes in the most

economical manner and at the highest standard of efficiency.

(i) The board shall have the power to request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the corporation the better to carry out its powers successfully, and the President shall, if in his opinion the public interest, service, and economy so require, direct that such assistance, advice, and service be rendered to the corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board and of the general manager.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the corporation shall be sold for use outside of the United States, her Territories and possessions, except to the United States Government for the use of its Army and Navy or to its allies in case of war.

Sec. 6. In order to enable the corporation to exercise the powers vested in it by this Act—

(a) The exclusive use, possession, and control of the

United States nitrate plants numbered 1 and 2, located respectively at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof are hereby entrusted to the corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the corporation for the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

Sec. 7. (a) The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to venue of civil suits.

(b) The corporation shall at all times maintain complete and accurate books of accounts.

Sec. 8. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the corporation covering the preceding fiscal year. This report shall include the total number of employees and the names,

salaries, and duties of those receiving compensation at the rate of more than $2,500 a year.

(b) The board shall require a careful and scrutinizing audit and accounting by the General Accounting Office during each governmental fiscal year of operation under this Act, and said audit shall be open to inspection to the public at all times and copies thereof shall be filed in the principal office of the Muscle Shoals Corporation at Muscle Shoals in the State of Alabama. Once during each fiscal year the President of the United States shall have power, and it shall be his duty, upon the written request of at least two members of the board, to appoint a firm of certified public accountants of his own choice and selection which shall have free and open access to all books, accounts, plants, warehouses, offices, and all other places, and records, belonging to or under the control of or used by the corporation in connection with the business authorized by this Act. And the expenses of such audit so directed by the President shall be paid by the board and charged as part of the operating expenses of the corporation.

Sec. 9. The board is hereby empowered and authorized to sell the surplus power not used in its operations and for operation of locks and other works generated at said steam plant and said dam to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth, and to carry out said authority the board is authorized to enter into contracts for such sale for a term not exceeding ten years and in the sale of such current by the board it shall give preference to States, counties, or municipalities purchasing said current for distribution to citizens and customers: Provided further, That all contracts made with private companies or

individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the board to cancel said contract upon two years' notice in writing, if the board needs said power to supply the demands of States, counties, or municipalities.

Sec. 10. It is hereby declared to be the policy of the Government to distribute the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance of Muscle Shoals.

Sec. 11. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power to construct, lease, or authorize the construction of transmission lines within transmission distance in any direction from said Dam Numbered 2 and said steam plant: Provided, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct a transmission line to Muscle Shoals, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization or two or more of them, for the sale of electricity for a term not exceeding thirty years, and in any such case the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the

board for such power: Provided further, That all contracts entered into between the corporation and any municipality or other political subdivision shall provide that the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class, and such contract shall be void if a discriminatory rate, rebate, or other special concession is made or given to any consumer or user by the municipality or other political subdivision: And provided further, That any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said person or corporation to agree that any resale of such electric power by said person or corporation shall be sold to the ultimate consumer of such electric power at a price that shall not exceed an amount fixed as reasonable, just, and fair by the Federal Power Commission; and in case of any such sale if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the Federal Power Commission, the contract for such sale between the board and such distributor of electricity shall be declared null and void and the same shall be canceled by the board.

Sec. 12. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from the steam plant located in that vicinity, or from any other steam plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per centum of the gross proceeds from the sale of power generated at Cove Creek Dam, hereinafter provided for, shall be paid to the State of

Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much excess power is thereby generated at Dam Numbered 2, and from the gross proceeds of the sale of such excess power 2½ per centum shall be paid to the State of Alabama and 2½ per centum to the State of Tennessee. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee the board shall not take into consideration the proceeds of any power sold to the Government of the United States, or any department of the Government of the United States used in the operation of any locks on the Tennessee River, or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose. The net proceeds derived by the board from the sale of power and any of the products manufactured by the corporation, after deducting the cost of operation, maintenance, depreciation, and an amount deemed by the board as necessary to withhold as operating capital, shall be paid into the Treasury of the United States at the end of each calendar year.

Sec. 13. The Secretary of War is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2: Provided, That the Secretary of War shall not install the additional power unit in said steam plant until, after investigation, he shall be satisfied that the foundation of said steam plant is sufficiently stable or has been made sufficiently stable to sustain the additional weight made necessary by such installation.

Sec. 14. It is hereby declared to be the policy of the Government to utilize the Muscle Shoals properties for the fixation of nitrogen for agricultural purposes in time of peace.

Sec. 15. The Secretary of War is hereby authorized, with appropriations hereafter to be made available by the Congress, to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long usage become known and designated as the Cove Creek Dam, according to the latest and most approved designs of the Chief of Engineers, including its power house and hydroelectric installations and equipment for the generation of at least two hundred thousand horsepower, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam.

Sec. 16. In order to enable and empower the Secretary of War to carry out the authority hereby conferred, in the most economical and efficient manner, he is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam and to negotiate and conclude contracts with States, counties,

municipalities, and all State's agencies and with railroads, railroad corporations, common carriers, and all public utility commissions and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this Act. When said Cove Creek Dam and transportation facilities and power house shall have been completed, the possession, use, and control thereof shall be intrusted to the corporation for use and operation in connection with the general Muscle Shoals project and to promote flood control and navigation in the Tennessee River, and in the Clinch River.

Sec. 17. The corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulae, and scientific information (not including access to pending applications for patents) necessary to enable the corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, and any patentee whose patent rights may have been thus in any way copied, used, or employed by the exercise of this authority by the corporation shall have as the exclusive remedy of a cause of action to be instituted and prosecuted on the equity side of the appropriate district court of the United States for the recovery of reasonable compensation. The Commissioner of Patents shall furnish to the corporation, at its request and without payment of fees, copies of documents on file in his office.

Sec. 18. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract for the purchase of electric power or fixed nitrogen or fertilizer ingredients is hereby violated, after the amount of the damages have been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court.

Sec. 19. (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the corporation and to moneys and properties of the United States intrusted to the corporation.

(b) Any person who, with intent to defraud the corporation, or to deceive any director or officer of the corporation or any officer or employee of the United States (1) makes entry in any book of the corporation, or (2) makes any false report or statement for the corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion or agreement, express or implied, with intent to defraud the corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both.

Sec. 20. In order that the board may not be delayed in carrying out the program authorized herein the sum of $10,000,000 is hereby authorized to be appropriated for that purpose from the Treasury of the United States, of which not to exceed $2,000,000 shall be made available with which to begin construction of Cove Creek Dam during the calendar year 1930.

Sec. 21. That all appropriations necessary to carry out the provisions of this Act are hereby authorized.

Sec. 22. That all Acts or parts of Acts in conflict herewith are hereby repealed.

Sec. 23. That this Act shall take effect immediately.

Sec. 24. That right to alter, amend, or repeal this Act is hereby expressly declared and reserved.

71st Congress, 3d Session } SENATE { Document No. 321

VETO MESSAGE RELATING TO DISPOSITION OF MUSCLE SHOALS

MESSAGE
FROM
THE PRESIDENT OF THE UNITED STATES
RETURNING

Without Approval the Joint Resolution (S. J. Res. 49) Entitled "A Joint Resolution to Provide for the National Defense by the Creation of a Corporation for the Operation of the Government Properties at and Near Muscle Shoals in the State of Alabama; to Authorize the Letting of the Muscle Shoals Properties Under Certain Conditions; and for Other Purposes."

February 17 (Calendar Day, March 3), 1931.—Read; Ordered to Lie on the Table and Be Printed

To the Senate:

I return herewith, without my approval, Senate Joint Resolution 49, "To provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals in the State of Alabama; to authorize the letting of the Muscle Shoals properties under certain conditions; and for other purposes."

This bill proposes the transformation of the war plant at Muscle Shoals, together with important expansions, into a permanently operated Government institution for the production and distribution of power and the manufacture of fertilizers.

Disregarding for the moment the question of whether the Federal Government should or can manage a power and fertilizer manufacturing business, we should examine this proposal from the point of view of the probabilities of success as a business, even if efficiently managed. Such an analysis involves a consideration of the capital invested, the available commercial power, the operating costs, the revenue to be expected, and the profit and loss involved from this set-up. The figures and estimates given herein are furnished by the War Department upon the authority of the Chief of Engineers.

Value of the Old Plant and Further Capital Outlay Required

The following properties and proposed extensions are embraced in the proposed project:

(a) Wilson Dam and its hydroelectric equipment valued at $37,000,000 being the original cost of $47,000,000 less $10,000,000 applicable to navigation.

(b) The steam power plant at Muscle Shoals valued at $5,000,000 being a reduction for depreciation of $7,000,000 from the original cost of $12,000,000.

(c) Proposed further additions to the electrical plant at Muscle Shoals costing $9,000,000.

(d) Proposed construction of Cove Creek Dam with hydroelectric plant with transmission line to Wilson Dam

$41,000,000 of which $5,000,000 may be attributed to flood control and improvement of navigation or, say, $37,000,000.

(e) Proposed construction of transmission lines for wholesale distribution of power within the transmission area—$40,000,000.

(f) Nitrate plants, quarries, etc., at Muscle Shoals which originally cost $68,555,000 but upon which no valuation is placed at present.

The total valuation of the old property to be taken over for the power portion of the project is therefore $42,000,000 after the above deductions from original cost. The new expenditures from the Treasury applicable to the power business are estimated at $90,000,000, less $5,000,000 which might be attributable to flood control, or a total of $127,000,000 of capital in the electrical project. This sum would be further increased by accumulated interest charge during construction. As shown later on several millions further would be required for modernizing the nitrate plants. The total requirement of new money from the Federal Treasury for the project is probably $100,000,000 even if no further extensions were undertaken.

Amount of Power Available From This Project

Assuming the additional power given by the construction of the Cove Creek Dam and the use of steam power for five months in the dry season each year, and taking the average load factor from experience in that region, about 1,300,000,000 kilowatt-hours of continuous power could be produced annually. Considered as a general power business a portion of this must be held in reserve to protect consumers, leaving a net of about 1,000,000,000

kilowatt-hours annually of salable power. This amount would be somewhat increased if a large proportion of 24-hour load were applied to fertilizer manufacture.

The secondary power for a period of less than seven months in the year is not regarded as of any present commercial value.

Operating Costs

The following is the estimated annual overhead and operating cost of the electrical end of the project including the steam plant necessary to convert 7-month secondary power into primary power as stated above:

Interest at 4 per cent per annum on capital of $127,000,000	$5,080,000
Amortization	1,890,000
Operating and maintenance cost of hydroelectric plant	775,000
Operating and maintenance cost of steam plant	850,000
Operating and maintenance cost of transmission lines	550,000
Total	$9,145,000

The estimated cost of production and distribution is, therefore, about 9.1 mills per kilowatt-hour. If only part of the transmission lines were constructed it would decrease capital and operating charges but would not comply with the requirement of equitable distribution through the transmission area.

Estimated Gross Income

The purpose of the bill is to provide production and wholesale distribution of surplus power and to give preference to States, municipalities, and cooperative organiza-

tions. It further provides that the policy of the Government must be to distribute the surplus power equitably amongst States, counties, and municipalities within transmission distance of Muscle Shoals and provides for the construction of transmission lines to effect this purpose. Such a transmission system for wholesale purposes only is estimated to cost $40,000,000. If it is proposed to sell power at retail to householders, then there would need be a great increase in the estimates of capital outlay and operation costs for such distribution.

The average gross income of the power companies in that territory, including retail as well as wholesale power, is about 12 mills per kilowatt-hour. This includes retail residential power averaging something over 50 mills per kilowatt-hour. Miscellaneous industrial power realizes about 10 mills per kilowatt-hour. The power sold wholesale to other companies and those engaged in municipal distribution averages about 7.2 mills per kilowatt-hour.

It is impossible to compute Muscle Shoals income under this project upon a basis which includes retail power sales, as this is a project for wholesale distribution only. It is impossible to compute it upon the basis of miscellaneous industrial rates as sales for industrial purposes from Muscle Shoals would presumably be mainly for manufacture of fertilizers and it would not be possible to average 10 mills per kilowatt-hour. A rate of not over 2 mills would be a large charge for such power. While the load factor would be improved by large use for this purpose, the net result, however, would be to diminish the gross income below the above rates from municipal and miscellaneous industrial services.

Assuming that the whole 1,000,000,000 kilowatt-hours should be sold to municipalities or other power distributors, it would on the basis of the realizations of the private

companies of 7.2 mills yield a gross annual income to this project of about $7,200,000, or a loss upon this basis of nearly $2,000,000 annually. This territory is now supplied with power and to obtain such an income it would be necessary to take the customers of the present power companies. To secure these customers it would be necessary to undercut the rates now made by them. It is difficult to estimate the extent to which it would be necessary to go in such rate cutting in order to secure the business. In any event it would of course diminish estimated income and increase the losses.

It is obvious that any estimate of income contains a large element of conjecture as the proportions of industrial and municipal load can not be foretold. But any estimate of the income of the project as set up by this legislation will show a loss.

Fertilizer Manufacture

The plants at Muscle Shoals were originally built for a production of nitrates for use in war explosives. I am advised by the War Department that the very large development in the United States by private enterprise in the manufacture of synthetic nitrogen now affords an ample supply covering any possible requirements of war. It is therefore unnecessary to maintain this plant for any such purposes.

This bill provides that the President for a period of 12 months may negotiate a lease of the nitrate plants for fertilizer manufacture under detailed limitations, but in failure to make such a lease the bill makes it mandatory upon the Government to manufacture nitrogen fertilizers at Muscle Shoals by the employment of existing facilities or by modernizing existing plants or by any other process. I may state at once that the limitations put upon lessees

in the bill are such that this provision is of no genuine importance. Inquiries have been made of the most responsible and experienced concerns that might possibly undertake such lease and they have replied that under the conditions set out in the bill it is entirely impractical for them to make any bid. The leasing provision is therefore of no utility; it may at once be dismissed. In consequence the project we have to consider under this bill is the manufacture of fertilizers by the Federal Government.

The Department of Agriculture reports that these plants are now more or less obsolete and that with power at even 2 mills per kilowatt-hour, with proper charges included, could not produce the products for which they are constructed as cheaply as these products are now being sold in the wholesale markets. Therefore, it would be necessary to modernize the equipment at an unknown cost in millions. There is no evidence as to the costs of nitrogen fertilizers by the newer equipment, and there is therefore no basis upon which to estimate the results to the Government from entering upon such a competitive business. It can, however, be stated with assurance that no chemical industry with its constantly changing technology and equipment, its intricate problems of sales and distribution, can be successfully conducted by the Government.

Proposed Administration

The first essential of all business is competent management. Although the bill provides for the management by three directors, the Congress must from the nature of our institutions be the real board of directors and with all the disadvantages to a technical business that arise from a multitude of other duties, changing personnel, changing policies, and regional interests. These three directors are to have political qualifications, as it is stipulated that not

more than two shall be of one political party. They are to receive $50 per diem, but are limited to $7,500 each for the first year and $5,000 annually thereafter. The act provides that:

> "All members of the board shall be persons that profess a belief in the feasibility and wisdom, having in view the national defense and the encouragement of interstate commerce, of producing fixed nitrogen under this act of such kinds and at such prices as to induce the reasonable expectation that the farmers will buy said products, and that by reason thereof the corporation may be a self-sustaining and continuing success."

In other words, they are to say that they believe in Government manufacture of fertilizers, and that it can be made a success on this set-up. We are thus supposed to appoint business administrators on the basis of their beliefs rather than their experience and competency. These directors are manifestly to have a political complexion and apparently the entire working force is likewise to have such a basis of selection, as the usual provision for the merit service required by law in most other Federal activities is omitted. Three men able to conduct a one hundred and fifty million dollar business can not be found to meet these specifications.

General Considerations

I am firmly opposed to the Government entering into any business the major purpose of which is competition with our citizens. There are national emergencies which require that the Government should temporarily enter the field of business, but they must be emergency actions and in matters where the cost of the project is secondary to

much higher considerations. There are many localities where the Federal Government is justified in the construction of great dams and reservoirs, where navigation, flood control, reclamation or stream regulation are of dominant importance, and where they are beyond the capacity or purpose of private or local government capital to construct. In these cases power is often a by-product and should be disposed of by contract or lease. But for the Federal Government deliberately to go out to build up and expand such an occasion to the major purpose of a power and manufacturing business is to break down the initiative and enterprise of the American people; it is destruction of equality of opportunity amongst our people; it is the negation of the ideals upon which our civilization has been based.

This bill raises one of the important issues confronting our people. That is squarely the issue of Federal Government ownership and operation of power and manufacturing business not as a minor by-product but as a major purpose. Involved in this question is the agitation against the conduct of the power industry. The power problem is not to be solved by the Federal Government going into the power business, nor is it to be solved by the project in this bill. The remedy for abuses in the conduct of that industry lies in regulation and not by the Federal Government entering upon the business itself. I have recommended to the Congress on various occasions that action should be taken to establish Federal regulation of interstate power in cooperation with State authorities. This bill would launch the Federal Government upon a policy of ownership and operation of power utilities upon a basis of competition instead of by the proper Government function of regulation for the protection of all the people. I hesitate to contemplate the future of our in-

stitutions, of our Government, and of our country if the preoccupation of its officials is to be no longer the promotion of justice and equal opportunity but is to be devoted to barter in the markets. That is not liberalism, it is degeneration.

This proposal can be effectively opposed upon other and perhaps narrower grounds. The establishment of a Federal-operated power business and fertilizer factory in the Tennessee Valley means Federal control from Washington with all the vicissitudes of national politics and the tyrannies of remote bureaucracy imposed upon the people of that valley without voice by them in their own resources, the overriding of State and local government, the undermining of State and local responsibility. The very history of this project over the past 10 years should be a complete demonstration of the ineptness of the Federal Government to administer such enterprise and of the penalties which the local community suffers under it.

This bill distinctly proposes to enter the field of powers reserved to the States. It would deprive the adjacent States of the right to control rates for this power and would deprive them of taxes on property within their borders and would invade and weaken the authority of local government.

Aside from the wider issues involved the immediate effect of this legislation would be that no other development of power could take place on the Tennessee River with the Government in that field. That river contains two or three millions of potential horsepower, but the threat of the subjection of that area to a competition which under this bill carries no responsibility to earn interest on the investment or taxes will either destroy the possibility of private development of the great resources of the river or alternately impose the extension of this

development upon the Federal Government. It would appear that this latter is the course desired by many proponents of this bill. There are many other objections which can be raised to this bill, of lesser importance but in themselves a warranty for its disapproval.

It must be understood that these criticisms are directed to the project as set up in this bill; they are not directed to the possibilities of a project denuded of uneconomic and unsound provisions nor is it a reflection upon the value of these resources.

I sympathize greatly with the desire of the people of Tennessee and Alabama to see this great asset turned to practical use. It can be so turned and to their benefit. I am loath to leave a subject of this character without a suggestion for solution. Congress has been thwarted for 10 years in finding solution, by rivalry of private interests and by the determination of certain groups to commit the Federal Government to Government ownership and operation of power.

The real development of the resources and the industries of the Tennessee Valley can only be accomplished by the people in that valley themselves. Muscle Shoals can only be administered by the people upon the ground, responsible to their own communities, directing them solely for the benefit of their communities and not for purposes of pursuit of social theories or national politics. Any other course deprives them of liberty.

I would therefore suggest that the States of Alabama and Tennessee who are the ones primarily concerned should set up a commission of their own representatives together with a representative from the national farm organizations and the Corps of Army Engineers; that there be vested in that commission full authority to lease the plants at Muscle Shoals in the interest of the local com-

munity and agriculture generally. It could lease the nitrate plants to the advantage of agriculture. The power plant is to-day earning a margin over operating expenses. Such a commission could increase this margin without further capital outlay and should be required to use all such margins for the benefit of agriculture.

The Federal Government should, as in the case of Boulder Canyon, construct Cove Creek Dam as a regulatory measure for the flood protection of the Tennessee Valley and the development of its water resources, but on the same bases as those imposed at Boulder Canyon—that is, that construction should be undertaken at such time as the proposed commission is able to secure contracts for use of the increased water supply to power users or the lease of the power produced as a by-product from such a dam on terms that will return to the Government interest upon its outlay with amortization. On this basis the Federal Government will have cooperated to place the question into the hands of the people primarily concerned. They can lease as their wisdom dictates and for the industries that they deem best in their own interest. It would get a war relic out of politics and into the realm of service.

Herbert Hoover.

The White House,
March 3, 1931.

EXCERPTS FROM AND REFERENCES TO CONGRESSIONAL DEBATES.

MUSCLE SHOALS BILLS,

including Section 124, National Defense Act of 1916.

Reference is made in the brief to the extensive compilation and analysis by Bolling R. Powell, Jr., of *"Congressional debates on the right of the Federal Government to operate electric power projects and on related subjects,"* pp. 975, 1935. That compilation assembles in convenient form, with index analysis, excerpts from the remarks of one hundred and forty members of the Senate and House in the debates (1916) on the nitrate plant bill (Sec. 124, National Defense Act, supra), under which was constructed Wilson Dam (and was designed the land plant at Muscle Shoals, switched over to the Act of April 11, 1918, 40 Stat. 518, supra); also sundry excerpts from the subsequent debates on the Norris Muscle Shoals bills, S. 46 (not approved by President Coolidge) and S. 49 (vetoed by President Hoover, supra), and related subjects.

The excerpts and references below are intended to be representative, but are not intended to be complete.

References are to Powell, op. cit., and the Congressional Record.

1916.

Senator Smith of South Carolina advocated the right of the Federal Government to engage in the production of nitrates for agricultural purposes on the "surplus" theory. In replying to a question by Senator Sutherland as to that power, the following answer and colloquy occurred:

Mr. Smith of South Carolina: Yes, it is; if in serv-

ing a governmental function it produces a surplus, and the disposition of that surplus is for the benefit of those upon whom you are dependent.

Mr. Sutherland: Then does the Senator think there is a warrant in the Constitution for engaging in the business which produces a given article, half of which is intended for governmental uses and half of which is intended for agricultural uses?

Mr. Smith of South Carolina: I have not used any arithmetic to see just how much. In the case of the man who makes the bread that you eat and the clothes that you wear, I cannot figure it down and be very sensitive of the Constitution when there is some benefit that may accrue to him. I am glad I have not such a trait. I feel under obligation to him to such an extent that I do not think I could look him in the face.

Mr. Sutherland: I am not more sensitive about the Constitution than the Senator from South Carolina ought to be, but I was undertaking to get his view.

Mr. Smith of South Carolina: The Senator from Arkansas (Mr. Clarke) hands me this—a copy of the Constitution—and I think I will read the preamble to the Constitution:

> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Mr. Sutherland: If the Senator from South Carolina thinks that it is a substantive grant of power, then the Senator and I have no common foundation upon which we can conduct an argument (Cong. Rec. Vol. 53, pt. 6, 5640; Powell 757-8).

Senator Kenyon found more constitutional difficulties in this provision than in the then pending Child Labor Bill.

* * * I realize there are some constitutional difficulties in the proposition. There are more constitutional difficulties in the proposition than there are in the child-labor bill which my friend from South Carolina has so strongly urged as unconstitutional.

* * * * * * *

Senator Hardwick moved to strike out those words which would authorize the United States to engage in the fertilizer business, thereby restricting the functions of the United States thereunder to recognized governmental functions. In this connection the Senator made the following comments:

April 12, 1916.

* * * Of course, the language that I am moving to strike out, which I understand my friend from South Carolina is not particularly opposing, is a proposition that the United States shall go into this improvement for the purpose of generating electrical or other power for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers. I have moved to strike out the words "and useful in the manufacture of fertilizers," because I think the governmental activities ought to be confined solely to governmental purposes. * * * (Cong. Rec., Vol. 53, pt. 6, p. 5952; Powell, p. 760).

Mr. Sutherland: Mr. President, I am not going to discuss the constitutional phase of this bill, although I believe the constitutionality of it is, at least, open to very grave doubt. But I realize from past experience in this body that when Senators have made up their minds to pass a certain piece of legislation constitutional arguments fall upon deaf ears.

However, I do call attention to the fact that all of this talk about it being constitutional to dispose of a surplus of any commodity that has been acquired

under a constitutional power is quite aside from the question. I have no doubt that when the Government of the United States, in the legitimate exercise of a constitutional power, has acquired a certain commodity and it is found afterwards that it or some portion of it is not needed, it may, of course, be disposed of. But that is not what is contemplated here. * * *

This bill contemplates from the beginning, as its principal purpose, that the surplus shall exist. It is not expected, it is not suggested, that this surplus shall arise fortuitously hereafter—accidentally hereafter—but it is contemplated in the bill itself that the Government shall manufacture the surplus.

The bill contemplates that we shall proceed to manufacture nitrates for two distinct purposes—first, in order to furnish powder to be used by the Government of the United States, which of course is a legitimate and constitutional power; and, in addition to that, that we shall from the very beginning undertake to manufacture nitrates to sell to the farmers of the country.

Mr. Gallinger: And continue to do it.

Mr. Sutherland: And continue to do it. Indeed, that is the primary and principal purpose of the bill, as the Senator from South Carolina (Mr. Smith) very frankly conceded. Now that is all I care to say with reference to that matter, except to suggest that the argument to which we have just listened from the Senator from Wisconsin (Mr. Husting) if it means anything at all, means that we may engage in any business or the manufacture of anything which may be for the benefit of the farmers of the country. If we can engage in the business of manufacturing fertilizers to sell to the farmers of the country, then upon exactly the same sort of reasoning we can engage in the business of manufacturing farm implements for the farmers of the country (Cong. Rec., Vol. 53, pt. 6, p. 5961; Powell 764-5).

* * * * * * *

Mr. Sutherland: Does the Senator think that the Government of the United States could appropriate money to build a factory for the purpose of manufacturing clothing for its Army, and then upon occasions when the operation of the factory was not necessary to produce clothing for the Army, that it might go into the manufacture of other clothing, to be sold in the market in competition with the dry-goods merchants of the country?

Mr. Jones: I think the principle is exactly the same as in this other case. I cannot see any difference.

Mr. Sutherland: Mr. President, if the Senator will permit me, I think the two things are utterly different * * *.

Mr. Jones: Now, then, after it has the plant constructed, and the power available and all the facilities necessary, and it has on hand all the clothing that it wants, I do not think that it is required to keep that plant idle. I do not think it is required to close it up. I believe that until it is again needed to supply uniforms it can go on and use the power and facilities that it has there for any purpose for which they are suitable, provided, of course, Congress appropriates the money. I do not believe there is any difference in principle between that case and the other.

* * * * * * *

Mr. Sutherland: Let me ask the Senator this question as an illustration of the point I am trying to make. It is necessary, however, to make a statement as a foundation for my question.

I have not any doubt and the Senator has not any doubt that we can appropriate money to buy a piece of land on which to erect a public building, and that if it afterwards turns out that we do not need the land for that purpose we can sell the land; Congress can authorize the sale of the land. But does the Senator think that we could appropriate a sum of

money to purchase land, and then, before it was spent, having ascertained that we did not need that land, that we could authorize some department of the government to go into the real estate business with that money.

Mr. Jones: I do not think that is a parallel case at all.

Mr. Sutherland: The difference between the Senator and myself is that I think it is a parallel case.

Mr. Jones: I do not think it is.

Mr. Sutherland: I think that we can sell anything that we have no use for; but I think that is a very different thing from a case where we find ourselves unable to carry on the manufacturing enterprise that we are authorized to do, and divert it into carrying on an essentially private business in competition with our own citizens (Cong. Rec., Vol. 53, pt. 6, p. 5959; Powell 317-18).

1918.

When the House was considering the water power bill, Mr. La Follette said:

"It is true that under Article IV, Section 3, paragraph 2, we find the following language:

" 'The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, or of any particular State.'

"But, Mr. Chairman, the Supreme Court, in decision after decision has enunciated the opinion that this provision of the Constitution does not imply nor show that the Federal Government has any proprietary rights as to water, or bed or bank, of any stream in these United States, either in navigable or non-navigable streams" (Cong. Rec., Vol. 56, Pt. 9, p. 9109; Powell, p. 105).

1928.

Mr. Garrett of Tennessee (May 9, 1928): Mr. Chairman, for the first time in all the history of the country it is deliberately proposed that the Federal Government shall go into business for business' sake. There is no use in our deceiving ourselves concerning this matter. This bill is not to promote navigation. No one would ever have dreamed of it as a navigation proposition.

This bill is deliberately designed to put the Federal Government into two avenues of business, namely, the manufacture of fertilizer and the development and sale of power, and in order to do it the Committee on Military Affairs has deliberately determined to take from the State in which the greatest water power possibilities exist the control over the water powers that are on the particular stream that this Cove Creek dam will affect (Cong. Rec., Vol. 69, pt. 4, p. 4622; Powell, pp. 603-604).

* * * * * * *

Senator Black of Alabama (March 12, 1928): The government never has had any right to manufacture power. * * * When it goes beyond the principle of control of navigation, it goes too far.

Cong. Rec., 69th Cong., Part IV, p. 4537; Powell, pp. 204-5.

* * * * * * *

Mr. Hull of Tennessee, in the debate on S. J. 46, May 9, 1928, asserted that the United States had no power to use the water for any purpose except navigation; that Congress has drifted along without any challenge from the States, and has naturally gone too far in some of the special acts that have been passed (Powell, p. 218).

* * * * * * *

Mr. Hull approved the formal statement asserted on behalf of the State of Alabama with reference to the matter:

> "Subject only to the authority of the United States relative to navigation and war purposes, the State of Alabama claims absolute title to, and ownership, jurisdiction, and control of, that portion of the Tennessee River which is within the State of Alabama, its waters, banks, beds, and soils, including the power in the water and the value thereof, and all other property rights in anywise incident thereto or arising therefrom" (Powell, p. 219).

* * * * * * *

> Mr. King (March 12, 1928): The United States as a Nation was formed, not as a business enterprise, or as a socialistic or communistic experiment. The powers conferred upon it by the Constitution are limited and they relate to governmental and national questions (Cong. Rec., Vol. 69, Pt. 4, p. 4543; Powell 347).

* * * * * * *

That a monopoly is essential in the situation appears to have been conceded by Mr. Norris in the discussion of his resolution (S. 46):

> Mr. Norris (February 29, 1928): You must have a monopoly, to begin with, in order to do it economically, and a monopoly ought to be owned and controlled and operated by the Government, not by private individuals, because if private individuals have a monoply of anything it is just as natural as the rising and setting of the sun that they will take advantage of it to the very limit (Cong. Rec., Vol. 69, Pt. 4, p. 3757; Powell, p. 350).

* * * * * * *

Mr. Bruce (March 13, 1928): If the Federal Government can take over Muscle Shoals and convert it into an instrumentality for the production of power and fertilizer, why may it not take over any other great water power of the country under the pretense of an exercise of the war power or other power and turn it, too, to industrial ends? Where is the limit to be set? Where is the boundary line to run? The effect of this joint resolution, if passed would be to embark the Federal Government on an absolutely uncharted sea of illimitable power and experimentation * * * (Cong. Rec., Vol. 69, Pt. 4, p. 4619; Powell, p. 353).

The Government has no legal right to build that dam or set up that steam plant or to create any works of any kind at Muscle Shoals except either in the exercise of its war powers or under the authority conferred upon it by the Federal Constitution to regulate navigation or commerce; and if, after erecting these works for another purpose, it goes into the business of manufacturing power or fertilizer it is a false pretender; it is like a thief who has gotten into a house by deceit and proceeds to despoil its inmates of their property (Cong. Rec., Vol. 69, Pt. 4, p. 4619; Powell, p. 355).

* * * because the Government went down to Muscle Shoals during the war and began the setting up of a plant for the purpose of producing nitrates for war purposes, here we are embarking upon one of the most gigantic, one of the most colossal, industrial enterprises that any community, any State, any individual, any combination of individuals, corporate or otherwise, ever undertook to create (Cong. Rec., Vol. 69, Pt. 4, p. 4625; Powell, pp. 355, 356).

* * * * * * *

Mr. Smoot (May 1, 1928): The largest single undertakings which the Government carries on from year to year are the maintenance and operation of the Army

and Navy. Now, applying this precise principle to these undertakings and in the hope of making them self-supporting and financially solvent, I have cast about for a business enterprise which offers an opportunity for apparently large profit. The happy thought of the automobile business has presented itself * * * (Cong. Rec., Vol. 69, Pt. 7, p. 7530; Powell, p. 357).

* * * * * * *

Mr. Bruce (May 24, 1928): I deny that even if the purpose of the Government in part were to produce nitrates at Muscle Shoals for war purposes, it would have the right, under the guise of producing nitrates for such a purpose, to produce them upon an enormous or even a great scale for purely commercial purposes. If it were to attempt to pervert its power to produce nitrates for war purposes to their production for commercial purposes on a large scale, it would be simply engaged in a fraud that the Supreme Court of the United States would not be long in striking down.

But, be that as it may, where is there a lawyer, familiar with the rudiments of law, who is prepared to contend that the Federal Government has any constitutional power whatsoever to produce commercial fertilizer or electric power?

We might as well talk about the Government having the power to go into the business of producing boots, and shoes, or hats and caps, or coats and trousers, or pig iron, or automobiles, or harvesting machinery, or any other product of a purely industrial nature. There is not one word in the Federal Constitution to which can be logically or reasonably referred the power of the Government to embark upon any ordinary industrial enterprise or upon any ordinary industrial business. I defy any lawyer in the Senate, I care not how subtle the operations of his

mind, or how exquisite his ability to split hairs, to find the slightest color of authority in the Federal Constitution for the Federal Government to produce commercial fertilizers or electric power at Muscle Shoals (Cong. Rec., Vol. 69, Pt. 9, p. 9724; Powell, p. 364). * * *

This measure, I say, endeavors to clothe the Federal Government with powers with which the Congress is powerless to clothe the Federal Government under the limitations imposed upon its scope by the organic law of the land (Cong. Rec., Vol. 69, Pt. 9, p. 9724; Powell, p. 365).

* * * * * * *

Mr. Bruce (May 24, 1928): * * * The Government has no constitutional authority whatever to produce power at Muscle Shoals for fertilizer or for other purposes, for that matter. The only constitutional power that it has there of an industrial nature is to produce war munitions, or, in the exercise of its ordinary proprietary power as a mere property holder, to lease the Muscle Shoals plant to private lessees (Cong. Rec., Vol. 69, Pt. 9, p. 9727; Powell, p. 369).

* * * * * * *

Mr. Tydings (May 25, 1928): If any man of good, sound mind, with real ordinary common horse sense, can show me in this document [the Constitution] a single provision under which the Government can go into the business of making fertilizer and selling power throughout the United States, I should indeed be obliged to him if he would point it out. It is not there * * * (Cong. Rec., Vol. 69, Pt. 9, p. 9795; Powell, p. 380).

* * * We are really adding an amendment to our Constitution by the adoption of this joint resolution. We are changing the whole philosophy of our Government (Cong. Rec., Vol. 69, Pt. 9, p. 9801; Powell, p. 385).

Mr. King (May 25, 1928): I am amazed that Senators give their approval to a doctrine that declares that the Federal Government may enter their States, take over the streams therein, engage in competition with corporations producing power, or commodities of any kind, and that in all such activities it and all corporations created by it shall be free from any State supervision or control, immune from any State regulation, and, of course, from all forms of State or municipal taxation * * * (Cong. Rec., Vol. 69, Pt. 9, p. 9842; Powell, p. 395).

* * * * * * *

1930.

Senator Norris has from the outset admittedly been indifferent to the theory underlying commercial fertilizer operations. His objective has consistently been for government manufacture and transmission of power, as a power proposition. Witness this colloquy on April 4, 1930:

* * * * * * *

Mr. Glenn: Let us see about an admission from the Senator from Nebraska. If all matters affecting navigation were out of this measure, and all matters affecting flood control were out of the measure, is it not likewise true that the Senator from Nebraska would still be enthusiastically for it?

Mr. Norris: I would be. I would be in favor of it, because when we passed the original measure it was a power proposition more than any other one thing (Cong. Rec., Vol. 72, Pt. 6, p. 6507; Powell, p. 438).

* * * * * * *

Mr. Cochran (April 24, 1930): Under this scheme the governmental agency proposes to generate electric current at Muscle Shoals and 11 other plants

authorized to be constructed on the river, take over existing transmission lines at its price or construct others, and seize without any compensation whatever the entire markets that have been built up by the existing utilities, such action rendering valueless the generating units of the existing utilities (Cong. Rec., Vol. 77, Pt. 2, p. 2285-6; Powell, p. 461).

1933.

Senator Fess stated that he had voted for the Boulder Canyon Project Act on the basis of flood control, with a by-product of power that could and should be leased by the government (Powell, p. 464, Cong. Rec., Vol. 77, Pt. 3, p. 2669).

1927-1933.

"Mr. Norris: • • • Then I came back and listened to the Governor of Alabama when he made an argument in which he practically said, as I understood, that that was their property. He claimed that we had no right even to sell a kilowatt of electricity generated there. We did have a right, he said, to make explosives for the use of the Government, but we could not go into business, and we could not sell electricity. (69th Cong. Rec. Pt. 3, 3440).

• • • • • • •

"Mr. Black. They say this, that for purposes of navigation the Government owns the river, but for other purposes the Government does not own it.

"Mr. Norris. That is right.

"Mr. Black. But it has the right to use it for purposes of navigation.

"Mr. Norris: That is the theory. I do not see how the Supreme Court can uphold that theory. (ib)

• • • • • • •

"If we have a legal reason for building a dam in a navigable stream, either for flood control or for navigation, we have a right to utilize that dam for any purpose and for every purpose consistent with the civilized age in which we live. Those are matters that will all be settled by the courts, I suppose, in due time, and I doubt whether we can accomplish much by a discussion of them here. (ib)

• • • • • • •

"The development of the maximum amount of navigation on any stream is conceded to be a governmental function. Flood control is likewise, I think, conceded to be a governmental function. Electricity comes as a by-product of those two, as an incident. (69th Cong. Rec. pt. 3, 3441)

"Mr. Norris: I realize the honest disagreement, among Senators and people generally about, as the phrase is usually employed, the Government going into business. I realize that many arguments may be made on each side of any proposition affecting the production and distribution of electric power, waterworks, and of other activities which some people desire the Government to take over and operate. I speak with great respect for those who do not agree with me on the subject, but I wish briefly to call to the attention of such Members of the Senate who are opposed to the Government going into any kind of business to the fact that we are already in this business." (Cong. Rec. Pt. 4, 3757.)

"Mr. Heflin: My position is that if the Federal Government goes in there to dispose of the power in any way it will have engaged in commerce, and the minute it attempts to dispose of power or has anything to do with it, it comes under the jurisdiction of the State. So there is a conflict between State and Federal power under the Senator's joint resolution." (69th Cong. Rec. Pt. 4, 4543).

"Mr. Black. * * * Of course, Alabama has never made the preposterous claim that it owns the dam or the plants placed on that stream by the Government; but when the Government steps beyond its authority and impresses a servitude upon that stream for power purposes we do claim that it is right and proper that the State should have the tax which a private power company would pay if it sold and distributed that power, and for that we are ridiculed!" (69th Cong. Rec. Pt. 4. 4620.)

This was the genesis of the tax allowance.

It is a matter of Congressional history that as a result of this position and contention by Senator Black, Senator Norris agreed to incorporate in the bill a provision requiring the Government to pay the State of Alabama 5% of the gross proceeds of the proprietary disposition of power. Section 13 recognizes in the body of the Act that the power thus to be sold was not a "governmental purpose."

* * * * * * *

"Mr. Swanson. Then, as I understand from the Senator's statement, if the Government's activity shall produce a surplus of power which it desired to dispose of, as a private corporation would dispose of power produced by it, in that event, the Government deriving such surplus power as a result of performing a governmental function, it is to do the same thing as a good citizen or a corporation in Alabama would do in similar circumstances, and pay a percentage to the State. The Senator thinks that is right? (72nd Cong. Rec. Pt. 6, 6503.)

"Mr. Swanson. It is only when the Government sells power, as a merchant sells merchandise or a power company sells power, that it pays taxes, on the power it sells, and no more." (ib.)

Referring to the power to be produced by this system in excess of the amount required for any governmental purpose, Senator Norris made this statement:

> "Mr. Norris. * * * There is also obtained more power than is needed for those governmental purposes, everybody admits that we should sell it. It is provided in the joint resolution that it shall be sold, first, to municipalities, to States, and so forth. In that case, we are going beyond a governmental function, and yet the power derived comes from the performance of a governmental function. So the joint resolution undertakes to levy a tax—it is not called a tax but a percentage to be paid to the State upon that excess or surplus of power. I have fixed that tax in the joint resolution at 5 per cent." (72nd Cong. Rec. Pt. 6, 6504.)

It is observed from the foregoing that the Senator admits "We are going beyond a governmental function." It is also to be observed that this percentage allowance is one not accorded as a matter of right, but to reconcile the controversy with representatives from the State of Alabama, which challenged the validity of the proposal. Senator Norris repeatedly emphasized this proprietary admission:

> "Mr. Norris. * * * I have always believed, that where, outside of purely governmental functions, we have a surplus, as we will have when we properly and efficiently develop these properties, in time of peace we will sell to communities and states, and, if they do not want to take it, then private corporations, the power we produce, and this provides for the payment of the tax, or what is equivalent to tax, in Tennessee and Alabama. (Apr. 2, 1930, p. 6623.)
>
> "This is not a governmental proposition. The Government already owns the property at Muscle

Shoals, and it is only a question of making that property at Muscle Shoals more valuable, while at the same time giving an illustration to the American people and to the world of what can be done in the way of development and the distribution of hydro-electricity power to the business man, to the manufacturer, and to the farmer of the South. (ib) p. 6633.

"The Senator may be right; but throughout the history of the United States we have been making public improvements where people get the benefit of it, it is true, and no consideration has been taken in regard to taxes. But where we go further than that, **go beyond the governmental function**, as we either must do or let go to waste, which would be sinful, then I think we are trenching upon the taxation rights of the States, and I do not want the Government to do that. (ib. p. 6681.)

* * * * * * *

"We might say the Government would go beyond its functions as a government in this case, because while it would always be doing a proper governmental thing, there will be developed more electricity than the Government uses, more than the Government can use for governmental purposes, and a State could say, 'Private parties would have done it, and we would have taxed them.' The answer in a municipality usually is, 'You are getting cheaper electricity.' But Tennessee can say, 'Georgia, Florida, Mississippi, are going to get the benefit of this reduced rate, very likely, even where a locality is not reached by a transmission line,' because the yardstick will be there, they will see what is being done, and they will compel these corporations of the Power Trust to reduce their rates many places. Where there is no transmission line, and no electricity from Muscle Shoals reaches those several localities, they will get the benefit of it, but they do not pay anything for it,

they do not sacrifice anything for it. Tennessee gets the same benefit, and yet it does not sacrifice something and get it. Alabama gets the same benefit and it sacrifices a little something to get it. It loses the right to tax. (Cong. Rec. Apr. 3, 1930, pp. 6680-6681.)

• • • • • • •

"We speak of it as a tax; of course, that is not strictly correct; but nothing is paid on anything that is used for governmental purposes—not a penny. That is carefully provided in this section. The Government pays no percentage of income for any electric power used for governmental purposes, no matter what kind it may be. So it seems to me that the illustration of a post office building or a courthouse building does not apply. If, however, in the case of a post office building, the Government leased it to some one engaged in private business—that might happen incidentally, and nobody would care about it—if it leased it to a man who ran a department store in it, if the Government was leasing property to people who transacted that kind of business, then it ought to pay something in lieu of taxes, I think. (Cong. Rec. May 1, 1933, p. 2673, 1st Col.)

"I do not want anyone ever to quote me as saying that I thought the Government ought to pay any taxes, or anything in lieu of taxes, for any property used exclusively for governmental purposes • • •" (ib. 2nd Col.)

HISTORY OF OFFERS TO PURCHASE OR LEASE MUSCLE SHOALS PROPERTIES OR POWER.

A reasonably complete summary of this matter appears of record in its review by Representative Goss in the House of Representatives on May 17, 1933 (Vol. 77, Pt. 4, Cong. Rec., 71st Cong., 1st Sess., pp. 3591-3594), from which we excerpt the following:

"The language of section 12 of H. R. 5081, as approved in conference, creating the Tennessee Valley Authority, which authorizes construction of transmission lines within transmission distance from Government-owned power plants, is as follows:

> In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power it is hereby expressly authorized * * * to construct, lease, purchase, or authorize the construction of transmission lines within transmission distance from the place where generated and to interconnect with other systems.
>
> * * * * * * *

"The language agreed to in conference, being the same as it passed the Senate, admits of the construction that in order for the Federal corporation to be in position to make contracts for sale of power upon a fair basis and to receive bids for power, it is necessary as a condition precedent to negotiating contracts that the Government shall construct transmission lines for disposing of surplus power, and thus create a system to be interconnected with other systems. Whether that is the intention, the implication is that the Government will be unable to market surplus power upon a fair basis either to States, political subdivisions or to individuals, partnerships, or corpora-

tions unless it first builds transmission lines to power markets. If such is the purpose of the language employed and the legislative intent, it is not sustained by the facts surrounding the history of attempts to enact Muscle Shoals legislation during recent years.

* * * * * * *

"Whether or not the purpose of the language accepted in conference and incorporated in the law is to make mandatory the construction of transmission lines, including a line from Cove Creek to Wilson Dam, it appears to be the purpose of the author (Senator Norris, of Nebraska) of the Senate amendment to require the construction of transmission lines without regard to their economic necessity and without regard to the ability of the corporation to dispose of its surplus power on a fair basis both with respect to the public interest involved and to the ability of the corporation to dispose of the power on a reasonable basis for its market value. * * *

"However, regardless of the legislative intent, as evidenced by the debates and the reports, and regardless of the plain import of the language employed in the legislation, the record of Muscle Shoals legislation since 1921 amply sustains the statement that private industry has all along shown a willingness to cooperate with the Government and has offered to purchase surplus power from the Muscle Shoals plants on a fair basis and, as to the transmission line to Cove Creek, to cooperate with the Government either in the sale at fair prices of power for construction purposes at Cove Creek or to transmit or interchange power between the two points over existing privately owned lines at reasonable prices. Thus there is no necessity for the Government to build transmission lines in order to dispose of surplus power at a fair market value.

"These various proposals have been submitted by individuals and corporations reputed to be financially able to carry out their contracts—corporations of well-known business success and integrity.

"The first was an offer of Mr. Henry Ford, the automobile magnate, made to the Secretary of War on the 8th day of July, 1921, and transmitted by the Secretary of War to the Congress, in which Mr. Ford agreed to take title to the nitrate plants, subject to use for national defense when needed, and to make total payments of $132,515,000 for lease of the power plants for a period of 100 years—an average of $1,325,000 annually. On the basis of the allocated investment of the Government in power-plant facilities at Muscle Shoals, this would have earned a reasonable return without obligation for additional expenditures from the Public Treasury. The proposal of Mr. Ford was resubmitted at each succeeding session of Congress until in October, 1924, when it was withdrawn.

"On January 15, 1922, the Alabama Power Co. proposed to complete the construction of the Wilson Dam power plant at its own expense and to lease for 50 years as a licensee under the Federal Water Power Act, and to supply certain quantities of power free of cost for operation of the nitrate plants or, if not used in that manner, to pay a fair value for the same.

"A subsequent proposal, submitted January 15, 1924, jointly by the Tennessee Electric Power Co., the Alabama Power Co., and the Memphis Power & Light Co. offered a total of $87,600,000 for a 50-year lease, plus such future payments as might be assessed against the lessee under the provisions of the Federal Water Power Act for benefits from headwater improvements.

"On January 21, 1924, the Union Carbide Co. submitted an offer to lease and operate the nitrate and power plants

for commercial chemical operations and to pay over a period of 50 years the sum of $28,324,200.

"On March 9, 1926, the Air Nitrates Corporation submitted an offer to take over the entire Muscle Shoals project, to operate in a manner to serve national defense, to manufacture fertilizer and other chemicals, and to pay $75,509,000 for a 50-year lease contract. This proposal, modified in certain details, was renewed to each Congress until 1928.

"In April, 1926, a proposal was submitted on behalf of a group of power companies, known as Associated Southern Power Cos., to lease the entire Muscle Shoals project for a period of 50 years and to pay $88,300,000 as rental, plus certain stipulated amounts for headwater improvements estimated to increase the payments for the 50-year period to $136,300,000.

"In 1928 a group of southern power companies submitted a proposal to the Secretary of War, solicited by the Secretary of War, to purchase all the commercially usable power at Wilson Dam for a period of 5 years, subject to recall either in part or in whole for such purposes as the Government might require, in which it was proposed to guarantee a minimum payment of $9,740,000. That offer, if it had been accepted, would have continued through the calendar year 1933 unless sooner canceled by the Government. According to a letter from the Chief of Engineers to Hon. Will R. Wood, Chairman of the House Committee on Appropriations, dated January 16, 1931—

> The guaranteed revenue which would have been derived had this contract been consummated would have been about $1,625,000 more to the end of 1930 than the revenue received under the actual agreements, and during the years 1931, 1932, and 1933 would be sufficient to pay for operating and maintenance expenses,

depreciation, and approximately 4-per cent interest on the investment in the hydroelectricity property. However, this contract was not accepted, as its terms would have prevented the prompt disposition of the Muscle Shoals property, which it was then expected would be made by Congress at an early date.

"The following is from recent testimony before the Military Affairs Committee of the House with reference to the proposed 5-year contract in 1928:

Mr. Christianson. Mr. Barry, you could better afford, then, to pay a higher rate to the Government for this power if you had a contract that was not terminable in 30 days?

Mr. Barry. Absolutely.

Mr. Christianson. Your opinion is that the Government would be better off if they should give you a contract terminable within a year?

Mr. Barry. Absolutely; and we agreed to do substantially that 5 years ago. We suggested a 5-year contract with 18 months' notice of cancellation.

Mr. Christianson. How much could you afford to pay?

Mr. Barry. At that time we agreed to pay the Government $2,200,000 a year.

"The following is a brief memoranda review of the various proposals showing money payments offered for taking over the Muscle Shoals project into private industry as taken from public records:

Cash Offers to United States for Wilson Dam Power at Muscle Shoals.

Name of Bidder	Date of Offer	Term of Contract Years	Total Payments	Average Annual Payment
Henry Ford.....	July 8, 1921 [1]	100	$132,515,184	[2] $1,325,151
Alabama Power Co.....	Feb. 15, 1922	50	(3)	.....
The Tennessee Electric Power Co., Alabama Power Co., and Memphis Power & Light Co.....	Jan. 15, 1924	50	87,600,000	[4] 1,750,000
Union Carbide Co.....	Jan. 21, 1924	50	28,324,200	566,484
Air Nitrates Corporation..	Apr. 9, 1926	50	75,509,000	1,510,180
Associated Southern Power Companies	Apr. 26, 1926	50	88,300,000	1,766,000
With headwater improvements	.....	...	136,300,000	[5] 2,718,000
Air Nitrates Corporation and American Cyanimid Co.	1927-28	50	80,176,700	1,603,534
Alabama Power Co. and Associates	1928	(6)	9,740,000	[7] 2,220,000

[1] Amended Jan. 25, 1922, and May 31, 1922; withdrawn October 1924.

[2] Computed on basis of Wilson Dam equipped to deliver 600,000 horsepower at investment of $50,000,000.

[3] 100,000 horsepower of electricity free of cost to Government for operation of nitrate plants or the purchase of this power by lessee from Government; lessee agreeing to complete Wilson Dam at no cost to Government and lease same under Federal Water Power Act.

[4] Also offered to pay United States or licensee for benefits from headwater improvements on basis of Federal Water Power Act.

[5] Payments to be increased from $1,766,000 to $2,718,000 for benefits from headwater improvements when made.

[6] 5 years with 18 months' notice.

[7] Minimum.

NOTE.—Many other offers have been made for Muscle Shoals, but only these contemplated actual cash payments to Government. Others, notably Hooker-Atterbury-White and Farmers Federated Fertilizer Corporation (Slemp) offers, provided practically for operation by lessees as agents of Government and sharing of profits with Government (without guaranteed return) in lieu of cash payments.

"Each of the foregoing proposals was made subject to recapture of the plants on stipulated terms, either in whole or in part, in event it became necessary for the Government to take over the plants for purposes of national defense. Likewise each of the proposals stipulated

that operation of the dam and power plants would be under rules and regulations prescribed by the War Department for the protection of navigation and operation of navigation facilities.

"There is ample evidence before the Congress and its committees that private power distributors within transmission distance of the plants are in position, with an extensive network of transmission lines and distribution systems covering practically the entire area, including most of the towns and cities and small communities within a radius of 200 miles, to absorb the surplus or excess power at Muscle Shoals not required for use by the Government and to pay reasonable prices. According to a letter dated August 20, 1931, from the President of the Alabama Power Co. to Senator Austin, reproduced in the Congressional Record of May 2, 1933, that company has been willing to contract for greater volumes of power than it has purchased in the past under temporary agreements and to pay an increased price if it could be assured of reasonable notice of cancellation; that the company would be willing to lease the power-generating plants or to buy at a fair price and on reasonable terms all power generated, or buy such surplus power as may not be used for other purposes, and would cooperate in making a success of any program adopted by the Congress for operating the plants for the benefit of agriculture and industrial development in the Tennessee Valley.

"Different officers representing power companies operating in the area of Muscle Shoals, in response to direct questions from members of the Military Affairs Committee, before which the question of legislation containing the language of sections 12 and 18 of the Senate bill, and before its enactment into law, was pending, testified, April 1933, as follows:

Mr. May. Reviewing that situation as you now understand it, what would you say would be the attitude of your power interests, for whom you appear, toward the proposition of buying from the Government at the switchboard the production of any electrical energy that may be produced at these plants?

Mr. Yates. Well, Mr. May, we have, on a number of occasions, tried to cooperate with the Government in any way, shape, or form in taking that energy and absorbing it in our system and distributing it.

In fact, in 1928, we spent a great deal of time and worked out a contract with the Secretary of War by which we would pay something in excess of $2,200,000 a year for the power at Muscle Shoals.

Mr. May. In consideration of your previous statement that your companies have now an available surplus capacity of production of about a billion kilowatt-hours per year, would it be an advantage to your companies to contract with the Government, or would that be a burden to them, even under those circumstances, with this surplus capacity available?

Mr. Yates. If we felt sure that there would never be a call for additional energy and our load would not grow, of course, we have now enough capacity.

But we feel that, having up to 1929 had a growth of 8 or 9 percent a year, compounded, we will have a market for this power, and just as rapidly as the market appears, whenever it is, we will absorb it.

* * * * * * *

Mr. Arkwright. By going out and building it up. If we have too much capacity, anything we pay for that power right now increases our cost; that is true. But you have to get some money for that power. We would like to take it, as we can build up a market and absorb it, and we recognize at once that if you sell it you have to get some money from it now, even if it does increase our cost.

So we would be prepared to negotiate with you for the purpose of purchasing power and take some of it now and take the rest of it as fast as we can build a market to absorb it and spread it over the whole area.

If in the utilization of this you use it for nitrate production at the site of the dam, and you use it to induce the location of industries at the site of the dam, such as electrical and chemical industries or heating industries that require large quantities of power at low rates, and from that improve the load factor of the system, and the rest of it you distribute over the area, over the widespread transmission systems owned by us in the area and on rates regulated by you, or by the board, I do not know what else you could do to serve the people to better advantage, and if you do it you want to do it as economically as possible.

* * * * * * *

Mr. Thomason. Assuming this plan of development there on the Tennessee River should go through, do not you think when that is completed that then the Government can produce power much cheaper and be able to sell it to your companies at the switchboard much cheaper than you can produce it?

Mr. Arkwright. That might be, at the switchboard; but then we have to bring it to the market.

Mr. Thomason. All right. Assuming, then, that is done and the Government, through the Tennessee authority, or whatever other agency it may select, would enter into a contract with you for the sale of that power at the switchboard and that contract also carried a provision that there shall be a maximum rate which meets the approval of the general public acting through its Federal and State commissions, providing that you shall have a reasonable profit on what you pay at the switchboard; then how could you have any objection?

Mr. Arkwright. I would not have any.

* * * * * * *

Mr. Longley. * * * and I am sure the Tennessee Electric Power Co. on its behalf, or from its standpoint, is entirely willing to work and to cooperate with the Tennessee Valley Association in any way, shape, or form, so that we can take the power, under some terms and conditions fixed, if you will, by this board, and pass that on to our customers at rates, if you will, fixed by them also.

Mr. Willkie. * * * We dedicate our transmission and distribution lines to the utmost accomplishment of the purposes which you gentlemen are seeking to bring about under this bill. All we ask is that you not destroy our property by invading our markets or by creating a board with the power to do that and thus destroy our ability to finance.

* * * * * * *

Mr. Willkie. * * * Mr. McSwain asked Mr. Yates whether or not we would sell them power at Cove Creek for their uses. I say to you now—and if you wish to make it in the form of a contract, we will make it with you now—that we will sell you all the power you need for your purposes for the building of the Cove Creek Dam.

* * * * * * *

Mr. Willkie. * * * A common carrier must be ready to serve all who seek its service at any time that they may present themselves for such service; and, of course, you cannot do that with a transmission line. But if it is the desire for us to contract to carry this power for Cove Creek for this Government, we will carry it for you.

* * * * * * *

Mr. James. * * * But we cannot sell the power at the switchboard, because you gentlemen would not buy it when you have too much power now.

> Mr. Willkie. I have said to you, Mr. James, that we will enter into a contract, and if it wants to be accepted here, it can be taken as an offer and as acceptance if you have the legal authority to do it. I will say this now, that we will enter into a contract with you to take that power and we will pass on any saving that is made on the generation of that power to the ultimate consumer.

"Furthermore, the Tennessee Electric Power Co. advised the Senator from that State, according to a telegram which appears in the Congressional Record of May 3, 1933, page 2791, that—

> With reference to Government's proposed building of Cove Creek-Muscle Shoals transmission line at estimated cost of $6,000,000, please advise Senate that at hearing before Military Affairs Committee of House, April 14, Mr. Willkie, speaking for this company, stated that if the Government will furnish us the power at Muscle Shoals, we will deliver an equal amount at Cove Creek at reasonable cost to be fixed by the Government, or this company will sell Government all its requirements of power at Cove Creek for construction work. Based upon Government's estimates of power requirements, in our judgment, the total cost of power for entire construction of Cove Creek Dam furnished under either proposal will be less than 1 year's interest on cost of construction of proposed transmission line, and that building of transmission line in any event wholly useless and wasteful, as entire territory more than adequately served with existing transmission lines.

"Therefore, with respect to the necessity for building distribution lines of any character in order to put the Government upon a fair basis, according to the foregoing testimony private companies with ample transmission lines

for whatever distribution the Government may need have stated a willingness to transmit surplus power owned by the Government to consumers throughout their distribution systems and to and from Cove Creek at prices fixed by a Government agency as fair, just, and reasonable to include a reasonable return or profit on the cost of transmission and distribution plus the purchase price of the power.

"Criticism upon the part of some Members of Congress that, pending final action by the Congress for making some disposition of the Muscle Shoals plants, the War Department, since the completion of Wilson Dam in 1925, has failed to secure a reasonable value for the power, is not justified by the facts. These payments, aggregating $4,955,229.18 to January 1, 1933, have been under contracts terminable at the will of the Government in order that Congress might be free at any time to take action for disposing of the project, a condition which in effect placed the power in the category of a commodity subject to delivery at the will of the seller, thus materially affecting both the ability of the purchaser to use large quantities of the commercially valuable power, or to pay a fair price for such power as could be used. In a report from the Secretary of War to the Senate (S. Doc. 222, 71st Cong., 3d sess.) it was stated that:

> Under the terms of the existing agreement with the Alabama Power Co., the Executive maintains complete freedom to carry out, at any time, any provision for the disposal of this power that may be decided upon by Congress. No industry or activity of any character will be jeopardized by the prompt termination of the existing agreement, when a definite policy for the utilization of this power shall have been decided upon by Congress. The situation would be other-

wise if the Department should sell the power directly to consumers. The shutting off of power to a consumer who has not the installed machinery to replace it would leave him without an immediate source of supply, would subject him to danger of serious financial loss, and certainly would embarrass the War Department and the Congress. The existing agreement affords the best obtainable return to the United States consistent with complete freedom of action.

The policy of the War Department has uniformly been opposed to entering into any arrangement that may embarrass Congress in directing the disposition of the public resources at Muscle Shoals, and this policy will be continued."

"In part 2 of the same document the Secretary of War explained:

Considering the present equipment of the properties at Muscle Shoals and the fact that all contracts must be revocable without notice in order to leave this property free for whatever action Congress may decide to take, the contracts with the Alabama Power Co. give the Government by far the highest obtainable financial return.

The Secretary of War has no choice but to follow the mandate of Congress expressed in the law. No other company, individual, or municipality has offered to buy the power from the Government at a price that will equal that now being received. This is no doubt due in part to the fact that the War Department has taken the position that it will not entangle the title to the property by long-time contracts that would restrict the freedom of Congress in dealing with the subject.

It has been deemed the wiser policy to make all contracts subject to immediate cancellation or revocation, so that there would be no claims outstanding, no en-

tanglements or clouds upon the title when Congress finally fixes the status of this project.

"The foregoing statement of the Secretary of War shows that the purchaser of the power was forced to recognize that there might be a termination of the existing agreement at any time, and therefore that the purchaser must have machinery installed to replace it. In other words, the purchaser must have an immediate source of supply available at all times to replace the power as a prerequisite to purchasing on the limited basis offered by the Government."

CERTAIN FACTS DIGESTED FROM MUSCLE SHOALS COMMISSION REPORT, 1931, (SENATE DOC. NO. 21, 72ND CONG., 1ST SESS.) AND CURRENT SOURCES.

In the Muscle Shoals Commission Report of 1931, Colonel Tyler, Corps of Engineers, U. S. A., has an extended analysis of the market for Muscle Shoals. He points out that seven major companies having installed 1,600,000 kilowatts of generating capacity are operating in this area, four of these companies with which the Government would directly compete,—viz.—the Georgia Power Company, Alabama Power Company, Tennessee Electric Power Company, and Mississippi Power Company, have an investment of approximately $400,000,000. The additional investment (according to Moody's Manual) of the other companies referred to by him will bring the total to approximately $600,000,000, without including over $300,000,000 investment in a radius of 200 miles from Cove Creek, Wheeler, Wilson and Pickwick Dams, making over $900,000,000.

Col. Tyler points out that every important load center receives service from two sources in this area, and after extended analysis, states that no market exists except that which is now supplied, and that the Government will have to obtain its market by strong inducements, including at least a 20% reduction in rates to cause communities to abandon their present sources of power. He then shows the prospective savings to consumers over a period of 15 years to be approximately $18,000,000, due to the reduction in rates, and that the deficit on the Government power business in that period would be approximately $40,000,000, or a net deficit to the Government of approximately $22,000,000. He concludes that the construction of such a system by the Government would be an economic waste,

in that it would duplicate transmission facilities now ample to serve the region, and that "the deficit from the construction and operation of such a system, which will have to be met by the Federal Treasury and by the general taxpayers, will largely exceed any savings from lower rates which may accrue to the limited local public served" (P. 68, M. S. Com. Report, 1931).

The total investment in the utility industry, nationwide, is approximately $12,000,000,000. Statement of Dr. David Friday submitted to the Committee on Interstate Commerce of the Senate in hearings on S-1725, on April 22, 1935, not yet printed. See, also, H. R., 74th Cong., 1st Sess., March 22, 1935 (p. 934).

Further excerpts from the statement to the Senate Committee are as follows:

> "Throughout the period from 1902 to 1929 the industry's demand for new funds for plant and construction was enormous. The following table shows the size of this demand by five-year periods. It grew from an average of twenty-four million dollars per year in the first twenty years of the industry's life to eight hundred million dollars in the rapid period of growth which followed 1922:

Year	Investment in plant	Amount added to plant during previous five-year period	Average added annually
1882 ..	.....	.....	.....
1902 ..	$ 483,000,000	$ 483,000,000	$ 24,000,000
1907 ..	1,054,000,000	571,000,000	114,000,000
1912 ..	2,098,000,000	1,044,000,000	209,000,000
1917 ..	2,933,000,000	834,000,000	167,000,000
1922 ..	4,229,000,000	1,296,000,000	259,000,000
1927 ..	8,880,000,000	4,650,000,000	930,000,000
1932 ..	12,125,000,000	3,245,000,000	649,000,000

"The turning point in the demand for investment funds needed for the construction of additional plant and equipment came about 1905. The industry put more money into the construction of plant and equipment during the five years which followed 1902 than had gone into it in all the twenty years previous. In the next five years from 1907 to 1912, it put in twice as much as in the previous five years. In fact, in that five years, it put in as much as had gone into the properties during the previous **twenty-five** years.

"Public regulation of rates always operates to keep them only slightly above the cost of rendering the service. This keeps the surplus earnings available for reinvestment in the property at a minimum. Even if the profits of the industry had all been put back into the business they would have been entirely inadequate to meet the needs for new capital. **If the electric industry had made earnings of 8 per cent annually on its investment in every year since 1902, and if all the earnings had been put back into the properties, the total investment would have been only $4,840,000,000 in 1932. The actual investment in 1932 was $12,125,000,000, and this was $7,285,000,000 more than the 1902 investment compounded at 8 per cent would have amounted to.**"

And as to the effect of the national power program of the present Administration upon the flow of capital into the electric industry, the following is said at page 42:

"* * * Our bank deposits are $6,000,000,000 larger than they were eighteen months ago and the banks have $2,000,000,000 in excess reserves over and above the amount which the law requires them to keep in the Federal Reserve. All this makes an enormous potential volume of funds available for investment, but as long as the security of that investment is beset by such threats as this bill contains,

these funds will contribute nothing to business revival. People will not subject their funds to the hazards which legislation of this type threatens. The investor will leave his money lying idle. As long as he does this, he knows at least what he has. To put it into an industry which is subject to liquidation and extinction by legislative action or administrative fiat is the last thing the owner of investment funds will dream of doing with them."

MATTERS RELATING TO NAVIGATION PROJECTS ON THE TENNESSEE RIVER.

I.

Recommendation of Major Lewis H. Watkins, District Engineer House Document 328, 71st Congress, 2nd Session, page 100, paragraph 80.

Recommendation. It is recommended that the general plan proposed for the combined development of the Tennessee River and its tributaries for navigation, power, and flood control be adopted as a general guide, subject to such modifications as may be found necessary and approved by the Chief of Engineers and Secretary of War, for navigation and flood control on the Tennessee River and its tributaries, and subject further to such modifications as may be found necessary in carrying out the provisions of the Federal water power act.

It is recommended that a project for the progressive improvement of the Tennessee River from its mouth to Knoxville, by a system of movable or low fixed dams and by locks of Ohio River standards be adopted to be completed within a period of 10 years at an estimated cost of $75,000,000 at the rate of $3,000,000 for the first year and $8,000,000 for each year thereafter until completion, with $40,000 for annual operation, care, and maintenance for each dam and pool; with the proviso that under the provision of the Federal water power act there may be substituted for any two or more of the low dams herein provided for, a high dam if the resulting cost to the Federal Government will be less than by the estimate herein for the low dams thus rendered unnecessary and provided further that the capacity of the waterway for the economi-

cal movement of modern barge traffic will not be any way lessened.

II.

Endorsement of Lt. Col. Geo. R. Spalding, Division Engineer (House Document 328, 71st Congress, 2nd Session, page 101).

Forwarded: concurring in the recommendation of the district engineer, except that for the present it is believed that the authorization should be limited to $40,000,000, the amount estimated as necessary to complete the 9-foot waterway to Chattanooga.

III.

Recommendations of Brig. Gen. T. H. Jackson, President of Mississippi River Commission (House Document 328, 71st Congress, 2nd Session, page 102).

The commission recommends that—

(1) No work on the tributaries of the Tennessee River or on the main stream above Chattanooga be undertaken at the present time by the United States, either directly or by participation in the cost.

(2) A project be adopted for the improvement of the Tennessee River from the mouth to Chattanooga by a system of locks and movable or fixed navigation dams of the Ohio River standards, giving a 9-foot navigable depth at an estimated cost of $40,000,000, with $40,000 per lock and dam annually for operation, care, and maintenance, provided that for any two or more of the navigation dams herein authorized there may be substituted a single high navigation and power dam with locks constructed by private interests under license by the Federal Power Commission, whenever the cost to the United States of the

equivalent portion of the navigation project, including locks, will thereby be less without decreasing its capacity and usefulness; and provided further that none of the navigation dams with locks herein authorized shall be placed under construction until time shall have elapsed sufficient, in the opinion of the Chief of Engineers, to determine that no private interests desire to construct the substitute power and navigation dams with locks as herein authorized.

IV.

Recommendations of Board of Engineers for Rivers and Harbors (House Document 328, 71st Congress, 2nd Session, pages 24-25).

The board is of the opinion that no further improvement of the Tennessee River above Knoxville or of the tributaries of the Tennessee River is worthy of being undertaken by the United States at the present time, either directly or by participation in the cost thereof, other than such maintenance of the existing navigation projects as may be justified from time to time.

The board recommends modification of the existing projects for the improvement of the Tennessee River below Knoxville, Tenn., so as to provide for a navigable channel with a depth of 9 feet at low water and suitable widths, by the construction of power dams, in general accordance with the plans contained in the report of the district engineer, modified as may be required by the Chief of Engineers: Provided, That the said power dams shall be constructed by States, municipalities, or private interests under licenses from the Federal Power Commission issued under the provisions of existing laws, and the locks and such minor works as may be necessary for navigation shall be constructed by the United States at an estimated cost of

$30,000,000: Provided further, That whenever it shall be demonstrated that the construction of any of the power dams included in this project is not economically feasible without participation by the United States in the cost of portions of the works not required solely for navigation, the Chief of Engineers shall submit to Congress a special report thereon with recommendations as to the method, most advantageous to the United States, of obtaining 9-foot navigation through the section of the river covered by the pool of the said power dam, with the estimated cost thereof.

V.

Recommendations of Major Gen. Lytle Brown, Chief of Engineers (House Document 328, 71st Congress, 2nd Session, pages 6-7, paragraphs 23-24).

After due consideration I concur generally with the district engineer and recommend that the adopted project by the United States for the improvement of the Tennessee River from its mouth to Knoxville be for a navigable depth of 9 feet at low water by low dams in the number and approximate location as set forth in the report of the district engineer: Provided, That under the provisions of the Federal water power act a high dam with locks may be substituted for any two or more of the low dams and built by private interests, States, or municipalities: And provided further, That in case high dams are built before the United States shall have built the projected locks and low dams which are to be replaced, the United States shall contribute to the cost of the substituted structures an amount equal to the estimated cost of the works of navigation for which substitution is made.

I do not concur in full with other advisory authorities in the following respects:

(a) The district engineer—He sets a time limit on the completion of the project. No time limit can be set at this time since this project must take its economic place in the general army of projects over the entire country and await the availability of money for its economical prosecution.

(b) The division engineer—He stops the project at the edge of the area most fruitful in the prospect for tonnage.

(c) The Board of Engineers for Rivers and Harbors—It leaves the project in the air by making navigation too dependent on power development and requires that the matter of the project be referred to Congress continually. The project should be definite and final, and it is possible to make it so in this case, if ever, because there has never been presented to Congress a more thorough and exhaustive study.

VI.

Excerpt from River and Harbor Act, approved July 3, 1930 (46 Stat. at L. 918, 927-28).

Chap. 847. An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following works of improvement are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the reports hereinafter designated.....

The project for the permanent improvement of the main

stream of the Tennessee River for a navigable depth of nine feet in accordance with the recommendations of the Chief of Engineers in House Document Numbered 328 of the Seventy-first Congress, second session, is hereby authorized: Provided, that an expenditure of $5,000,000 shall be authorized to be appropriated for the prosecution of work under this project: Provided further, That the Chief of Engineers is hereby directed to ascertain and report to Congress on the first day of the first regular session of the Seventy-second Congress, advising the prospective cooperation offered by responsible interests, under the Federal Water Power Act, in the program of construction recommended by the Chief of Engineers, providing for the nine foot project by means of high dams.

VII.

Report and recommendation of Major Gen. Lytle Brown, Chief of Engineers (House Document 131, 72nd Congress, 1st Session, Page 4, paragraphs 8-9).

The recent economic conditions are such that there has been a delay in the growth of demand for power, and the present time is not a favorable one for definite commitments of cooperation from responsible interests for the construction of high dams as provided in the project for Tennessee River. It is possible that the investigations now in progress may develop the feasibility of cooperative improvement of the section below Colbert Shoals through the construction of a high dam. This section of the river now affords reasonable navigation facilities, and the construction of low navigation dams can well be postponed until the prospective cooperation in the construction of high dams is definitely determined. Economic factors warrant the expectation of prospective cooperation by responsible

interests in the construction of high dams above Chattanooga as the market for power warrants. The construction of high dams between Dam No. 2, Muscle Shoals, and Hales Bar is considered somewhat remote.

I recommend, therefore, that the appropriation of funds be authorized for the construction of low navigation dams to provide 9-foot navigation from head of Colbert Shoals to the Hales Bar Lock and Dam below Chattanooga, at an estimated cost of approximately $22,500,000, which is $17,500,000 in excess of the present authorized appropriation.

VIII.

Excerpt from report of Major Gen. Lytle Brown, Chief of Engineers, (House Document 131, 72nd Congress, 1st Session, Page 3, Paragraph 7.).

A further study of the economics of the proposed power and navigation dams in the Tennessee River has been made by Lt. Col. M. C. Tyler, formerly Chief Engineer for the Federal Power Commission. This study was furnished the Commission appointed jointly by the President of the United States and the Governors of Tennessee and Alabama to consider the utilization of the United States plants at Muscle Shoals and has been published by that Commission. This report indicates that each of the three proposed high dams between Knoxville and Chattanooga possesses a value for public utility service which, together with the Federal contribution for navigation set forth in the adopted project, materially exceeds the estimated cost of construction. The report finds that none of the proposed projects below Hales Bar is economically sound at the present time. The foundation conditions for constructing a high dam at the original Aurora Landing site are not considered sufficiently assured to warrant discussion of the economics of

that project. The construction of Dam No. 3, next above the existing Dam No. 2 at Muscle Shoals, might possibly prove attractive to private capital after the three dams above Chattanooga and the Cove Creek project are in operation, and the Pickwick Landing site might prove attractive to private capital after the three dams at Chattanooga and the Cove Creek project are in operation, provided a re-regulating dam is built below Pickwick Landing so that it may be used on peak load.

TITLES OF CURRENT ARTICLES ON TVA.

There is set out below a partial list of the titles of current public discussions of the Tennessee Valley Authority from references contained on the cards of the Library of Congress:

Bench-Marks in the Tennessee Valley, by A. E. Morgan, Survey Graphic, January, March, May, November, 1934, March, 1935, Scholastic, March 17, 1934;

Business and Government in the Tennessee Valley, D. E. Lilienthal, Ann. Am. Acad., March, 1934;

Dawn for the Tennessee Valley, Review of Reviews, June, 1933;

Development of the Tennessee Valley, A. E. Morgan, Literary Digest, November 18, 1933;

Great American Experiment, Fortune, July, 1935;

Guinea Pig Valley, Literary Digest, April 22, 1933;

$1,000,000,000 Guess, New Outlook, January, 1935;

Mr. Roosevelt's Dream for the Tennessee Valley, Christian Cent., February 15, 1933;

Mr. Roosevelt's Vision of a Tennessee Utopia, Literary Digest, February 18, 1933;

Muscle Shoals Active at Last, Scientific American, Oct., 1933;

Muscle Shoals, Commonweal, June 2, 1933;

Our $180,000,000 Gamble, American Mercury, January, 1935;

Planning in the Tennessee Valley, A. E. Morgan, Current History, September, 1933;

Power and the New Deal, A. E. Morgan, Forum, March, 1935;

Progress in the Art of Living, A. E. Morgan, Recreation, December, 1934;

Promised Land, Collier's, June 3, 1933;

Purposes and Methods of the Tennessee Valley Authority, A. E. Morgan, Ann. Am. Acad., March, 1934;

Revolution by Electricity, Scribner's, October, 1934;
Setback for the Power Trust, New Republic, Dec. 27, 1933;
Tennessee, Seed of a National Plan, Survey Graphic, May, 1933;
Tennessee Valley, a Prevision of Utopia, Literary Digest, March 17, 1934;
Tennessee Valley Authority, A. E. Morgan, Scientific Monthly, January, 1934;
Tennessee Valley Authority Goes Ahead With Power Plants, Christian Cent., January 24, 1934;
Tennessee Valley Authority Project, Am. City, September, 1933;
Tennessee Valley Experiment, Harper's, May, 1935;
Tennessee Valley Idea, Current History, July, 1934;
Tennessee Valley Looks to the Future, National Education Association Magazine, January, 1934;
Tennessee Valley Plan, New Republic, Feb. 15, 1933;
Tennessee Valley, Power Paradise, Travel, September, 1935;
There'll Be Shouting in the Valley, Collier's, June 30, 1934;
TVA: A New World Begins, Forum, January, 1935;
TVA Celebrates Year's Progress, Christian Cent., June 20, 1934;
TVA Progress Guide for Nation, Scholastic, December 8, 1934;
TVA's Five-Point Program, Literary Digest, December 2, 1933;
Uncle Sam, Peddler of Electric Gadgets, New Outlook, Aug., 1934;
Utilities Face New Attack, Government Competition, Review of Reviews, January, 1934;
What Will the T. V. A. Do to the U. S. A.?, Christian Cent., April 11, 1934;
Will Government Operation of Power Utilities Benefit the Public?, D. E. Lilienthal, Cong. Digest, October, 1934.

Excerpts From Opinion on Demurrer to the Original Bill by the Chancery Court of Knox County, Tennessee, Rendered July 17, 1935, in the Case of Tennessee Public Service Company et al. v. City of Knoxville, No. 26,507, Now Pending on Appeal by the City of Knoxville Before the Supreme Court of Tennessee in *Tennessee Public Service Company v. City of Knoxville*, Chancery Cause No. 10.

CHANCELLOR'S OPINION.

* * * * * * *

"The complainant is the holder of a franchise now in full force granted by the defendant City of Knoxville and is operating under and subject to all governmental, state and municipal licenses and certificates of convenience and necessity and permits necessary to the lawful conduct of its said business.

Complainant owns, operates and maintains in the City of Knoxville an electric distribution system.

The service of the complainant is at all times under the supervision of the Railroad and Public Utilities Commission of the State of Tennessee, which Commission has the exclusive authority under the laws of the State of Tennessee to determine the reasonableness of the rates charged for such utility service.

The bill avers that the service rendered by the complainant company is adequate and that the complainant company is abiding by all the rules and regulations imposed by the Railroad and Public Utilities Commission of the State of Tennessee.

The value of the distribution system of the complainant in the City of Knoxville is in excess of four million dollars

and complainant is a large Federal, State and Municipal taxpayer.

* * * * * * *

That in order to effectually carry out the plan of the Tennessee Valley Authority to engage in the proprietary business of producing and selling electricity, the defendant City of Knoxville, acting in concert with the Public Works Administration and the Tennessee Valley Authority, determined to appropriate the complainant's said business by coercion and sale of complainant's properties to the Tennessee Valley Authority, by threatening the construction of a competing distribution system through the use of public funds from Public Works Administration with the agreement that the Tennessee Valley Authority would supply electricity to the City of Knoxville.

It is further averred that said plan was publicly announced that the defendant Tennessee Valley Authority and Public Works Administration acting in concert in usurpation of powers not possessed by them and in arbitrary and capricious abuse of delegated powers, in order to accomplish such purpose took the following steps:

(1) On March 1, 1934, the Tennessee Valley Authority entered into a contract with the defendant City of Knoxville by the terms of which the defendant agreed to buy or build a distribution system and the Tennessee Valley Authority agreed to deliver electricity and specified rates and provided rules and regulations for the City's management and control of said business of selling electrical energy,— a copy of said contract being exhibited to the bill.

The bill further avers that this agreement was made when the City was financially unable to construct the distribution system; that the proposed rates for the sale by the City are below cost and that the City will incur a

deficit and that additonal taxes will thereby be imposed on the taxpayers of the City.

(2) On April 2, 1934, the Public Works Administration entered into a contract with the defendant City agreeing to loan Two Million Dollars and to grant or give to the City Six Hundred Thousand Dollars of public funds upon the express condition that the City enter into an agreement with the Tennessee Valley Authority providing that the Tennessee Valley Authority shall agree to furnish to the City for a period of not less than twenty years a supply of electrical energy to meet the demand of the residential, commercial and industrial customers to be served by the system and at such rates as shall be satisfactory to the Public Works Administration.

Said contract further provided that the City should furnish two certified copies of said agreement between the City and the Tennessee Valley Authority as a condition precedent to the Public Works Administration being required to furnish any part of the loan or grant.

(3) That thereafter the Tennessee Valley Authority instituted negotiations with the complainant to purchase the complainant's distribution system and that the complainant under duress and under coercion of ruinous competition and destruction of its property and in order to prevent its property being rendered valueless entered into the negotions so initiated by the Tennessee Valley Authority; that acting in concert with the Tennessee Valley Authority and the Public Works Administration the defendant advised the complainant that if the complainant did consummate the sale to the Tennessee Valley Authority the defendant would refrain from getting funds from the Public Works Administration and would abandon its plans to construct

a municipal distribution system and that in accordance with this understanding and under those circumstances the complainant and the Tennessee Valley Authority continued negotiations and on July 26, 1934, entered into a contract to convey certain properties in and about the City of Knoxville, Tennessee, to the Tennessee Valley Authority,—a copy of said contract being exhibited to the bill.

By the terms of such agreement the Tennessee Valley Authority agreed to assume complainant's contract, leases and franchises affecting the properties to be sold and to assume the contract between the complainant and the Carolina Power & Light Company.

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It is further averred that before the complainant and Tennessee Valley Authority could consummate such sale it was necessary to obtain the consent and approval of the Railroad & Public Utilities Commission of Tennessee and complainant made application to said Commission, attempted to obtain its authority and on October 26, 1934, an order was made granting the approval of the Commission but providing that said approval shall not be construed as conceding or yielding to the Tennessee Valley Authority or to the Federal Government any of the rights, powers, jurisdiction or authority of the State as a sovereign over the properties involved, and expressly reserving for judicial determination, by the courts of competent jurisdiction, the question of the constitutional right of the Tennessee Valley Authority to enter into said contract with the complainant and engage in an enterprise or business of the character contemplated by said contract.

These proceedings were taken by certiorari by other interested parties thereto to the Third Circuit Court of

Davidson County, at Nashville, Tennessee, a writ of supersedeas being issued to stay the consummation of said sale. This litigation is still pending in said court.

It is averred that it was therefore impossible to close the agreement within the time specified by said contract and an extension granted thereto, to-wit, October 31st, 1934.

The bill avers that the complainant, still acting under duress and coercion, continued its negotiations with the Tennessee Valley Authority; that while said negotiations were still pending, the defendant City of Knoxville, on October 30th, 1934, threatened to proceed with its plan for the construction of an electric system; that complainant received assurances from the representatives of the United States upon which it relied that the Public Works Administration would not advance the funds of the United States to the City pending such negotiations; that while negotiations were still pending, the City from time to time threatened construction of a distribution system; said threats being made in concert with the Tennessee Valley Authority in an attempt to coerce the complainant, and it was announced in the public press and a resolution was spread on the minutes of the City Council that a contract had been let to build the North Knoxville unit of a distribution system and that since March 12, 1935, the City has claimed that it has let a contract to build the North Knoxville unit, and that Hess & Barton, contractors of Pennsylvania, are placing poles for said distribution system and that the City is proposing to pay for said work with the Public Works Administration funds unlawfully granted to it.

* * * * * * *

In view of the fact that the complainant faced with financial disaster and ruin chose to negotiate with the Ten-

nessee Valley Authority for a contract which was never closed; that the bill avers that the negotiation was the result of such threatened disaster,—which the demurrer admits,—that the defendants in this suit were not parties to such a proceeding and that no benefits of any kind were derived therefrom by anyone and that the parties did not change their relative positions, I am of the opinion that the complainant is not estopped either in pais or judicially estopped in this proceeding.

* * * * * * *

The exhibits to the bill which were read upon the hearing of this demurrer show beyond any question or doubt that it was the purpose of the Federal Administrator of Public Works to make grants and loans only to applicants in the Tennessee Valley, such as the City of Knoxville, for the purpose of building distribution systems who proposed to co-operate with the Tennessee Valley Authority under the terms and agreements made and provided by the Tennessee Valley Authority and the Public Works Administration for the outlet for Tennessee Valley Authority power. There can be no possible question under this record that it was the policy of the Public Works Administration to grant or withhold public funds on those conditions and the bill avers conspiracy. The exhibits to the bill clearly show the existence of such conspiracy and under these facts the complainant has the right to maintain this suit without joining or attempting to join the Public Works Administration and/or the Tennessee Valley Authority.

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In other words the contract provides that the City of Knoxville should charge rates prescribed by the Tennessee Valley Authority and should expend the receipts received

for the sale of electric energy to its inhabitants and customers **not in the manner and form prescribed by the City Council** but under the orders and directions of the Administrator of Public Works.

The State of Tennessee under its sovereign power is vested with the inherent obligations and duties, called constitutional rights, to exercise governmental functions over its inhabitants and with respect to their rights. Certain of those functions the State of Tennessee can of course legally delegate to municipalities or subdivisions of the State.

Certain of its governmental power and functions have been delegated to the City of Knoxville.

Neither the City of Knoxville acting through its legislative body, the City Council, nor the State of Tennessee acting through its legislative body, the State Legislature, can surrender these powers, nor can the City delegate these inherent and governmental powers to others.

* * * * * * *

The City of Knoxville had no constitutional authority or power to execute a contract by which the inherent governmental function of regulating rates to be charged for its own electricity sold to its inhabitants and the disposition of the proceeds derived from the sale of such power was vested in a branch or arm of the Federal Government. The State of Tennessee through its Legislature in 1935 passed certain statutes which the defendant claims validated this provision. The Court is of the opinion that the statutes do not refer to the Tennessee Valley Authority Act. They are vague and not specific and couched in language too general and indefinite.

However the Legislature could not grant this govern-

mental function of the State to regulate utility rates for the benefit of its inhabitants to an arm of the Federal Government, such as the Tennessee Valley Authority, or the Public Works Administration, as provided in these contracts. The validating act referred to would be invalid and unconstitutional and no authority for the execution of said contract.

It therefore follows that the act of the City in so attempting to delegate its sovereign and constitutional power renders the Public Works Administration contract which requires the execution of the Tennessee Valley Authority contract invalid and illegal.

The TVA in executing the contract with the City by which it fixes the re-sale rates of surplus power sold by it was acting under Secs. 831 I, J and K of the TVA Act passed May 18, 1933.

The sections referred to purport to authorize the TVA to discriminate as to purchasers and fix the rates of re-sale.

Under our dual system of government the acts of the Federal Goxernment to be valid under the Constitution must apply to the external affairs of the nation or to those internal affairs which affect all the States generally.

Gibbons v. Ogden, 9 Wheat. 1.

The sale of electricity in this state is a utility subject to be regulated and controlled by the state. The regulation of the internal affairs of a state is reserved to the state, under our system of government. There is no constitutional authority for this attempt on the part of the Federal Government, acting through the TVA, to invade the jurisdiction of a state and usurp the powers and governmental

functions of the state. Such action is in violation of the 10th Amendment to the Federal Constitution and invalid.

* * * * * * *

It follows that the competition to which complainant would be subjected by the City, acting under and through the contracts with the PWA and TVA, would be illegal, and complainant was within its legal rights in seeking the injunctive protection of this Court."

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July 17, 1935.

(Signed) A. E. Mitchell
Chancellor.